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Virginia. Convention, Wheeling, 1861.

ORDINANCES AND ACTS

OF THE

Restored Government of Virginia,

PRIOR TO THE FORMATION OF THE STATE OF WEST VIRGINIA;

WITH THE

CONSTITUTION AND LAWS

OF

THE STATE OF WEST VIRGINIA,

TO MARCH 2d, 1866.

REPRINTED BY ORDER OF THE LEGISLATURE.

WHEELING:
JOHN FREW, PUBLIC PRINTER,
1866.

E534
.V43
Office

Resolved by the Legislature of West Virginia:

Fifteen hundred copies each of the ordinances of the convention which assembled at Wheeling, on the 11th of June, 1861, of the acts of the general assembly of Virginia, passed at the sessions commencing July 1, 1861, December 2, 1861, May 6, 1862, and December 4, 1862, with the constitution of this state, the schedule accompanying the original constitution and the ordinances accompanying the amended constitution, and the acts of the legislature for the years 1863, 1864, 1865 and 1866, shall be printed and bound in one volume in the form now prescribed by law for the acts of each session.

ADOPTED, February 28, 1866.

Exchange
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ORDINANCES

OF THE

CONVENTION,

ASSEMBLED AT WHEELING,

ON THE

11th OF JUNE, 1861.

PRINTED BY AUTHORITY OF THE CONVENTION.

WHEELING, VA.:
1861.

A DECLARATION
OF THE
PEOPLE OF VIRGINIA,

REPRESENTED IN CONVENTION, AT THE CITY OF WHEELING,
THURSDAY, JUNE 13, 1861.

The true purpose of all government is to promote the welfare and provide for the protection and security of the governed, and when any form or organization of government proves inadequate for, or subversive of this purpose, it is the right, it is the duty of the latter to abolish it. The Bill of Rights of Virginia, framed in 1776, re-affirmed in 1830, and again in 1851, expressly reserves this right to a majority of her people. The act of the General Assembly, calling the Convention which assembled at Richmond in February last, without the previously expressed consent of such majority, was therefore a usurpation; and the Convention thus called has not only abused the powers nominally entrusted to it, but, with the connivance and active aid of the executive, has usurped and exercised other powers, to the manifest injury of the people, which, if permitted, will inevitably subject them to a military despotism.

The Convention, by its pretended ordinances, has required the people of Virginia to separate from and wage war against the government of the United States, and against citizens of neighboring States, with whom they have heretofore maintained friendly, social and business relations:

It has attempted to subvert the Union founded by Washington and his co-patriots, in the purer days of the republic, which has conferred unexampled prosperity upon every class of citizens, and upon every section of the country:

It has attempted to transfer the allegiance of the people to an illegal confederacy of rebellious States, and required their submission to its pretended edicts and decrees:

It has attempted to place the whole military force and military operations of the Commonwealth under the control and direction of such confederacy, for offensive as well as defensive purposes:

It has, in conjunction with the State executive, instituted wherever their usurped power extends, a reign of terror intended to suppress the free expression of the will of the people, making elections a mockery and a fraud:

The same combination, even before the passage of the pretended ordinance of secession, instituted war by the seizure and appropriation of the property of the Federal Government, and by organizing and mobilizing armies, with the avowed purpose of capturing or destroying the Capital of the Union:

They have attempted to bring the allegiance of the people of the United States into direct conflict with their subordinate allegiance to the State, thereby making obedience to their pretended ordinances, treason against the former.

We, therefore, the delegates here assembled in Convention to devise such measures and take such action as the safety and welfare of the loyal citizens of Virginia may demand, having maturely considered the premises, and viewing with great concern the deplorable condition to which this once happy Commonwealth must be reduced unless some regular adequate remedy is speedily adopted, and appealing to the Supreme Ruler of the Universe for the rectitude of our intentions, do hereby, in the name and on the behalf of the good people of Virginia, solemnly declare that the preservation of their dearest rights and liberties and their security in person and property, imperatively demand the reorganization of the government of the Commonwealth, and that all acts of said Convention and Executive, tending to separate this Commonwealth from the United States, or to levy and carry on war against them, are without authority and void; and that the offices of all who adhere to the said Convention and Executive, whether legislative, executive or judicial, are vacated.

An ORDINANCE for the Reorganization of the State Government.

Passed June 19, 1861.

The People of the State of Virginia, by their Delegates assembled in Convention at Wheeling, do ordain as follows:

1. A governor lieutenant governor and attorney general for the state of Virginia, shall be appointed by this convention, to discharge the duties and exercise the powers which pertain to their respective offices by the existing laws of the state, and to continue in office for six months, or until their successors be elected and qualified; and the general assembly is required to provide by law for an election of governor and lieutenant-governor by the people as soon as in their judgment such election can be properly held.

2. A council, to consist of five members, shall be appointed by this convention, to consult with and advise the governor respecting such matters pertaining to his official duties as he shall submit for consideration, and to aid in the execution of his official orders. Their term of office shall expire at the same time as that of the governor.

3. The delegates elected to the general assembly on the twenty-third day of May last, and the senators entitled under existing laws to seats in the next general assembly, together with such delegates and senators as may be duly elected under the ordinances of this convention, or existing laws, to fill vacancies, who shall qualify themselves by taking the oath or affirmation hereinafter set forth, shall constitute the legislature of the state, to discharge the duties and exercise the powers pertaining to the general assembly. They shall hold their offices from the passage of this ordinance until the end of the terms for which they were respectively elected. They shall assemble in the city of Wheeling on the first day of July next, and proceed to organize themselves as prescribed by existing laws, in their respective branches. A majority

in each branch of the members qualified as aforesaid, shall constitute a quorum to do business. A majority of the members of each branch thus qualified, voting affirmatively, shall be competent to pass any act specified in the twenty-seventh section of the fourth article of the constitution of the state.

4. The governor, lieutenant-governor, attorney general, members of the legislature, and all officers now in the service of the state, or of any county, city or town thereof, or hereafter to be elected or appointed for such service, including the judges and clerks of the several courts, sheriffs, commissioners of the revenue, justices of the peace, officers of the city and municipal corporations, and officers of militia, and officers and privates of volunteer companies of the state, not mustered into the service of the United States, shall each take the following oath or affirmation before proceeding in the discharge of their several duties:

"I solemnly swear (or affirm,) that I will support the constitution of the United States, and the laws made in pursuance thereof, as the supreme law of the land, anything in the constitution and laws of the state of Virginia, or in the ordinances of the convention which assembled at Richmond on the thirteenth of February, eighteen hundred and sixty-one, to the contrary notwithstanding; and that I will uphold and defend the government of Virginia as vindicated and restored by the convention which assembled at Wheeling on the eleventh day of June, eighteen hundred and sixty-one."

5. If any elective officer, who is required by the preceding section to take such oath or affirmation, fail or refuse so to do, it shall be the duty of the governor, upon satisfactory evidence of the fact, to issue his writ declaring the office to be vacant, and providing for a special election to fill such vacancy at some convenient and early day to be designated in said writ; of which due publication shall be made for the information of the persons entitled to vote at such election; and such writ may be directed, at the discretion of the governor, to the sheriff or sheriffs of the proper county or counties, or to a special commissioner or commissioners to be named by the governor for the purpose. If the officer who fails or refuses to take such oath or affirmation be appointed by the governor, he shall fill the vacancy without writ, but if such officer be appointed otherwise than by the governor or by election, the writ shall be issued by the governor, directed to the appointing power, requiring it to fill the vacancy.

ARTHUR I. BOREMAN, *President*.

G. L. CRANMER, *Secretary*.

An ORDINANCE to authorize the apprehending of suspicious persons in time of war.

Passed June 19, 1861.

The People of Virginia, by their Delegates assembled in Convention at Wheeling, do ordain that the Sixth and Seventh Sections of the Seventeenth Chapter of the Code of Virginia, be amended and re-enacted as follows:

1. The Governor may cause to be apprehended and secured, or may compel to depart from this state, all suspicious subjects or citizens of any foreign state or power at war with the United States.

2. And whereas, the convention at Richmond have declared the union between the state of Virginia and the other states, under the constitution of the United States, to be dissolved, and have attempted to transfer the allegiance of the people of this state to an illegal confederacy of rebellious states called the confederate states of America; claiming that the state of Virginia and the said confederate states are rightfully, and in fact foreign states or powers in reference to the United States: Now, therefore, all persons in this commonwealth adhering to and supporting the said convention at Richmond, or the said confederate states, or professing to owe allegiance or obedience to the same, shall be deemed, (for the purposes of this ordinance only,) subjects or citizens of a foreign state or power at war with the United States.

3. The governor may send for the person and papers of any such person within this state, in order to obtain information to enable him to act in such cases.

4. Any warrant or order of the governor under this ordinance may be directed to any sheriff or other officer, civil or military, and shall be executed according to the terms thereof by such officer, who shall have all the powers necessary for the purpose, either in or out of his county or corporation.

5. If the governor shall have just cause to believe that any persons in this state claiming to be subjects or citizens of the said confederate states, or adhering to and supporting the said convention or the said confederate states, or professing to owe allegiance or obedience to the same, are about to assemble together, or have assembled themselves together, for the purpose of drilling or receiving military instruction, or to organize themselves as a military force, or to attempt any military operation, or do any act which may endanger the safety or welfare of the good people of this commonwealth or any portion of the same, he may cause such assemblage to be prevented or dispersed, and the persons who may be about to assemble or who have assembled as aforesaid, to be apprehended and secured, or may compel them to depart from this state; and for this purpose he may issue his warrant or order directed to any sheriff or other officer, civil or military, which warrant or order shall be executed as aforesaid. And any assemblage of two or more persons for any purpose inimical to the government of the United States, or of this state as reorganized by this convention, shall be deemed an unlawful assembly, and the persons so offending may be proceeded against and punished as provided in chapter one hundred and ninety-five of the code of Virginia.

6. If any sheriff or other person shall transmit or pay any money, or any check, draft, bill, order, note or certificate for the payment of money, to any officer or other person at Richmond or elsewhere, for the use of the said confederate states, or of the illegal state government at Richmond, now waging war against the United States, or shall furnish any money, arms, military equipments or munitions of war, or aid or other support to the said confederate states, or state government, or to any military force under the control or direction of the same, or to any person or persons about to join any such military force, the governor may cause to be apprehended and secured, or may cause to depart from this state, the sheriff or other person guilty of such offense, and for this purpose may issue his warrant or order and cause the same to be executed as hereinbefore provided.

7. The powers vested in the governor by this ordinance shall be exercised only upon satisfactory evidence and with the concurrence of a majority of his council.

8. This ordinance shall take effect from its passage, and may be altered or repealed by the general assembly.

ARTHUR I. BOREMAN, *President.*

G. L. CRANMER, *Secretary.*

An ORDINANCE relating to the Receipts and Disbursements of the Public Revenue, and providing for the appointment of an Auditor, Treasurer, and Secretary of the Commonwealth.

Passed June 21, 1861.

The People of Virginia, by their Delegates assembled in Convention in Wheeling, do ordain as follows:

1. The general assembly, as soon as it shall be organized at Wheeling, pursuant to the ordinances of this convention, shall elect by joint vote of the two houses, an auditor of public accounts, a treasurer, and a secretary of the commonwealth, whose terms of office shall respectively commence as soon as they shall be duly qualified, and shall continue for the unexpired portion of the current term of said offices, and until their successors be respectively elected and qualified.

2. The officers so to be elected shall discharge the duties and exercise the powers pertaining to their several offices by existing laws, so far as such laws may be consistent with the ordinances of this convention.

3. Each of said officers shall give bond with security, to the satisfaction of the governor; which bond shall be payable to the commonwealth of Virginia, and be conditioned for the faithful performance of the duties of the office.—The penalties of the bonds shall be respectively as follows: that of the auditor of public accounts, twenty thousand dollars; that of the treasurer, fifty thousand dollars; and that of the secretary of the commonwealth, five thousand dollars. Each of the bonds shall be submitted to the governor for approval, and if he be of opinion that it is in proper form and duly executed, and that the security is sufficient, he shall endorse his approval thereon, and cause the same to be deposited in some secure place for safe keeping.

4. The auditor of public accounts and the treasurer, shall each keep an office in the city of Wheeling for the transaction of their official business, and the hours for transacting business at said offices shall be from eight in the morning until three in the afternoon between the first day of April and the first day of November, and from nine in the morning until three in the afternoon during the remainder of the year.

5. It shall be the duty of the several sheriffs, and all other persons who have in their hands or are liable for any monies which by existing laws are payable to the treasury of the state of Virginia, forthwith to adjust their several accounts with the auditor to be elected as aforesaid, and pay over to the treasurer herein provided for, the amounts which shall respectively be found due to the state.

6. If any sheriff or other person, having in his hands or being liable for any monies which by existing laws are payable to the treasury, fail or refuse to adjust his account, or to pay over such monies as herein required, the auditor of public accounts shall immediately publish a notice of such default in some newspaper in the city of Wheeling; and if such sheriff or other person shall not within thirty days after such publication, have duly adjusted his account and paid over such monies, he shall forfeit and pay to the commonwealth the sum of five hundred dollars, to be levied by distress under warrant of the governor, which warrant it shall be the duty of the governor to issue on satisfactory evidence that such default has occurred, directing the same at his discretion to the sheriff of any county, or to a special commissioner or commissioners for the purpose; and the sheriff or other person making default as aforesaid, and his or their securities shall further be liable to judgment in the name of the commonwealth of Virginia, for the amount appearing to be due, with interest thereon from the time of such default till payment, and fifteen per centum upon the principal, as damages, to be recovered by motion on ten days' notice in any court of record in the state.

7. The several commissioners of the revenue and sheriffs, having first taken the oath or affirmation required by the ordinances of this convention, and being otherwise duly qualified, shall proceed with all convenient dispatch, to the discharge of their several duties in relation to the assessment and collection of the public revenue under the existing laws, so far as the same may not be inconsistent with the ordinances of this convention.

8. All monies to be paid into the public treasury shall be paid into the Merchants' and Mechanics' Bank of Wheeling, at the city of Wheeling, or one of its branches at Point Pleasant, Clarksburg and Morgantown, or into the North Western Bank of Virginia, at Wheeling, or one of its branches at Parkersburg or Wellsburg; or if east of the Blue Ridge, into the Bank of the Old Dominion, in Alexandria, all monies of the state collected in the counties east of the Blue Ridge of mountains, to the credit of *The Treasury of Virginia;* and the person so paying the same shall take from the proper officer of such bank or branch a certificate of the fact. The treasurer, on the delivery of such certificate, shall retain and file the same, charging the amount therein specified to the proper bank or branch, and delivering to the person who made the payment at bank, duplicate receipts for the amount so paid, specifying on what account the money was paid. The person making the payment shall forthwith hand over one of the said receipts to the auditor of public accounts, to be retained and filed by him and charged to the treasurer's account; and upon the other receipt, which is to be retained by the person making the payment, the auditor shall endorse as follows: *A duplicate hereof has been filed in the auditor's office*, and affix his signature and the proper date to such endorsement.

9. No receipt of the treasurer shall be an acquittance or discharge to any person for any sum of money due to the commonwealth, unless such receipt be endorsed by the auditor of public accounts as aforesaid. And any person bound to pay money into the public treasury, who shall pay the same otherwise than according to this ordinance, shall remain liable for such money, and be subject to every fine, penalty or forfeiture to which he would have been subject if he had not paid the same.

10. If the governor, at any time when this convention and the general assembly reorganized under the ordinances thereof, shall not be in session, shall be of opinion that the safety of the public funds requires that no more public monies should be paid into any one or more of the depositories specified in the eighth section, or that the monies which may be in the same to the credit of the treasury should be withdrawn, he may announce the fact by proclamation, to be published in some newspaper in the city of Wheeling, and in the city of Alexandria; and in the proclamation he may, if it be necessary, designate another depository or depositories at which monies due the commonwealth may thereafter be paid. And after such proclamation published it shall not be lawful to pay any sum of money on state account into any depository or depositories to which such payment shall be thereby forbidden; and the auditor of public accounts and the treasurer, if required by the governor, shall cause the monies held by such depository or depositories to be transferred to some other lawful depository or depositories of the public funds. But all such proclamations and orders of the governor shall, as soon as possible, be submitted to this convention or to the general assembly, for their revision.

11. Any person claiming to receive money from the public treasury shall apply to the auditor of public accounts for a warrant for the same. And the auditor, if he find such money to be due by the state, and that the payment thereof has been authorized by any ordinance of this convention, or act of the general assembly as reorganized under the ordinances of this convention, shall issue his warrant therefor upon the treasurer, specifying on what account the money is to be paid, and to what appropriation the same is chargeable. And the treasurer, on the presentation of said warrant to him, shall, if satisfied that said warrant has been authorized as aforesaid, endorse upon said warrant his check, directed to some one of the depositories in which there shall be money to the credit of the treasury, which check shall be payable to the order of the person entitled to receive the amount therein specified. The treasurer shall, however, at no time draw a check on any bank, branch, or other depository, unless there be money enough therein, to the credit of the treasury, to pay such check. And no bank, branch or other depository, holding money to the credit of the treasury, shall pay any check drawn by the treasurer unless the same be endorsed upon a warrant, authorizing the same, issued by the auditor of public accounts.

12. This ordinance shall take effect from its passage. It may be altered or repealed by the general assembly.

ARTHUR I. BOREMAN, *President.*

G. L. CRANMER, *Secretary.*

An ORDINANCE fixing the compensation of certain officers therein mentioned.

Passed June 21, 1861.

The People of Virginia, by their Delegates assembled in Convention at Wheeling, do ordain that the compensation of the several officers herein mentioned shall be as follows:

Of the governor, at the rate of three thousand dollars per annum;

Of the attorney general, at the rate of one thousand dollars per annum;

Of the secretary of the commonwealth, at the rate of fifteen hundred dollars per annum;

Of the auditor of public accounts, at the rate of two thousand dollars per annum;

Of the treasurer, at the rate of fifteen hundred dollars per annum;

Of the president of the senate, the speaker of the house of delegates, and the president of this convention, eight dollars to each for every day's attendance;

Of the other members of the senate, house of delegates, and of this convention, four dollars to each one for every day's attendance; but no person shall receive compensation for the same day both as a member of this convention and of the legislature;

Of the secretary of this convention, eight dollars for each day's attendance, out of which he is to pay his assistant;

Of the sergeant-at-arms attending this convention, and sergeant-at-arms for the Legislature, four dollars for each day's attendance; and two dollars per day for each door keeper and police officer employed; and one dollar per day for each of the pages.

2. The secretary of the commonwealth, auditor of public accounts and treasurer, shall once at least in every quarter submit to the governor their several accounts for office expenses, including printing, stationery, blank books, fuel and other things necessary for the transaction of their official business, which accounts when approved by the governor, and such approval certified in writing, shall be allowed and paid. All expenses incurred by the governor and council in the transaction of official business shall be submitted to the auditor of public accounts in the same manner as other claims against the state.

3. The members of the senate and house of delegates shall be allowed mileage at the rate of ten cents for every mile of necessary travel to be computed by the nearest and most direct route from their several residences to the city of Wheeling.

4. This ordinance shall take effect from its passage, and may be altered or repealed by the general assembly.

ARTHUR I. BOREMAN, *President.*

G. L. CRANMER, *Secretary.*

An ORDINANCE recognizing the constitutional duty of the Commonwealth of Virginia to call forth the militia of the State in obedience to the lawful requisition of the government of the United States, "to execute the laws of the Union, suppress insurrections and repel invasions."

Passed June 25, 1861.

Whereas, by the Proclamation of the President of the United States, three regiments of volunteer militia, consisting of infantry or riflemen, have been called into the service of the United States, to aid in the execution of the laws of the Union, and other and additional regiments may in like manner be hereafter lawfully called into the service of the United States for the like purpose;

Now, therefore, the People of Virginia, by their Delegates assembled in Convention at Wheeling, do ordain as follows:

1. That the governor of this commonwealth grant commissions in the usual and prescribed form, to the officers of the several regiments which may have been heretofore, or may hereafter be mustered into the service of the United States; such officers to take rank in their several grades as of the dates of their several elections; the said regiments to be numbered in the order of their organization, and styled "Virginia Volunteer Militia in the service of the United States." Full returns of said regiments shall, as soon as practicable be made to the adjutant general, who shall make due record thereof, and of all commissions issued under this ordinance. Such regiments shall be organized in the mode prescribed by the act of congress of the United States for such case made and provided, and the officers thereof shall be appointed in the mode provided by the existing laws of this commonwealth.

2. This ordinance shall take effect from and after the day of its passage, and may be repealed or amended by the general assembly.

Arthur I. Boreman, *President.*

G. L. Cranmer, *Secretary.*

An ORDINANCE relating to the Collection of the Revenue.

Passed June 25, 1861.

The People of Virginia, by their Delegates assembled in Convention at Wheeling, do ordain as follows:

1. That on all taxes hereafter collected there shall be allowed to the person from whom they are collected, by the officer collecting the same, ten per centum on the amount thereof if such payment be made on or before the fifteenth day of September next; if made after the fifteenth day of September and prior to the fifteenth day of October next, six per centum on the amount paid; and if made after the said fifteenth day of October and prior to the tenth day of November next, three per centum shall be allowed on the amount paid.

2. It shall be the duty of the auditor of the public accounts to credit the accounts of the several sheriffs with the per centage allowed to be deducted from said taxes under the terms of the preceding section: provided, the said sheriffs shall account for and pay over the said taxes collected, within ten days after each respective period stated in said section.

3. This ordinance shall take effect from and after the day of its passage, and may be repealed or amended by the general assembly.

Arthur I. Boreman, *President.*

G. L. Cranmer, *Secretary.*

An ORDINANCE requiring the evidence of the taking certain oaths to be filed in the office of the Secretary of the Commonwealth.

Passed June 25, 1861.

The People of Virginia, by their Delegates assembled in Convention at Wheeling, do ordain as follows:

1. When a person heretofore elected or appointed, or who shall be hereafter elected or appointed, to any office in this state, shall take the oaths required of him in a court of record, he shall procure a transcript from the record of the court, stating the fact of his having taken such oaths; and when he takes such oaths before a judge, notary or justice, he shall procure a certificate of the person administering the same, stating the fact.

2. When the oath prescribed in the ordinance for the reorganization of the state government shall be taken as aforesaid, the person taking the same shall cause the said transcript or certificate to be delivered to the secretary of the commonwealth, who shall file and preserve the same in his office. And if such transcript or certificate be delivered as aforesaid to the secretary of the commonwealth, it shall not be required of the person taking the oath to deliver the transcript or certificate as prescribed by the sixth section of the thirteenth chapter, or by the nineteenth section of the twenty-fourth chapter of the second edition of the code of Virginia.

3. This ordinance shall take effect from its passage, and may be altered or repealed by the general assembly.

Arthur I. Boreman, *President.*

G. L. Cranmer, *Secretary.*

An ORDINANCE providing that the copies of the Ordinances printed under the authority of this Convention, shall be received as evidence.

Passed June 25, 1861.

Be it ordained by the People of Virginia, in Convention assembled at Wheeling;

1. That the secretary of the convention cause one thousand copies of the ordinances of this convention to be printed in a uniform style with the journal, and that the printed copies of said ordinances, thus published under the authority of this convention, shall be received as evidence in the courts of this state, for any purpose for which the original ordinance could be received, and with as much effect. That the governor direct the distribution of said ordinances, thus published, in such manner as shall best subserve the public interests.

2. This ordinance shall take effect from and after its passage.

Arthur I. Boreman, *President.*

G. L. Cranmer, *Secretary.*

An ORDINANCE providing for the discharge of the duties of the Board of Public Works.

Passed August 9, 1861.

The People of Virginia, by their Delegates assembled in Convention at Wheeling, do ordain as follows:

1. Until the general assembly shall direct an election of members of the board of public works, and the same shall be duly elected and qualified, the governor, auditor and treasurer of the commonwealth shall constitute the said board, and shall exercise the authority and discharge the duties thereof. The secretary of the commonwealth shall discharge the duties of the clerk of the said board.

2. This ordinance shall take effect from its passage.

A. I. Boreman, *President.*

G. L. Cranmer, *Secretary.*

An ORDINANCE providing for the discharge of the duties of the office of Second Auditor.

Passed August 9, 1861.

The People of Virginia, by their Delegates assembled in Convention at Wheeling, do ordain as follows:

1. The duties of the office of Second Auditor, as prescribed by the laws now in force, shall, until the vacancy now existing in the said office is filled by the general assembly, be discharged by the auditor of public accounts, without additional compensation.

2. This ordinance shall take effect from its passage, and may be altered or repealed by the general assembly.

A. I. Boreman, *President.*

G. L. Cranmer, *Secretary.*

An ORDINANCE declaring null and void the proceedings of the Richmond Convention of 1861.

Passed August 9, 1861.

The People of Virginia, by their Delegates assembled in Convention at Wheeling, do ordain as follows:

1. All ordinances, acts, orders, resolutions and other proceedings of the convention which assembled at Richmond on the thirteenth day of February last, being without the authority of the people of Virginia constitutionally given, and in derogation of their rights, are hereby declared illegal, inoperative, null, void, and without force or effect.

A. I. Boreman, *President.*

G. L. Cranmer, *Secretary.*

An ORDINANCE in relation to the collection of the Public Revenue.

Passed August 12, 1861.

The People of Virginia, by their Delegates assembled in Convention at Wheeling, do ordain as follows:

1. There shall be allowed to every sheriff and collector, for collecting the revenue levied in the year eighteen hundred and sixty-one, in addition to that now allowed by law, a commission of two and one-half per centum on the amount of taxes with which he is chargeable; and if the sheriff or collector of any county or corporation, where the amount of taxes with which he is chargeable does not exceed the sum of ten thousand dollars, shall pay the same or any part thereof into the treasury within the time now required by law, he shall be allowed a further additional commission of two and one-half per centum on the amount so paid.

2. This ordinance shall be in force from its passage, and may be altered or repealed by the general assembly.

A. I. Boreman, *President.*

G. L. Cranmer, *Secretary.*

An ORDINANCE to provide for holding a special term of the County Court of Jackson County.

Passed August 19, 1861.

The People of Virginia, by their Delegates assembled at Wheeling, do ordain as follows:

1. A special term of the county court of Jackson county shall be held, commencing on the fourth Monday of August, eighteen hundred and sixty-one, and continuing until the business brought before it is disposed of, for the purpose of reorganizing the said court, if necessary, for reclaiming and providing for the keeping and safety of the records, books and papers of the said county, and for transacting such other business as may properly come before it.

2. This ordinance shall be in force from its passage.

A. I. Boreman, *President.*

G. L. Cranmer, *Secretary.*

An ORDINANCE to provide for the formation of a new State out of a portion of the territory of this State.

Passed August 20, 1861.

Whereas, it is represented to be the desire of the people inhabiting the counties hereinafter mentioned, to be separated from this commonwealth, and to be erected into a separate state, and admitted into the union of states, and become a member of the government of the United States:

1. The people of Virginia, by their delegates assembled in convention at Wheeling, do ordain that a new state, to be called the state of Kanawha, be formed and erected out of the territory included within the following described

boundary; beginning on the Tug Fork of Sandy River, on the Kentucky line where the counties of Buchanan and Logan join the same; and running thence with the dividing lines of said counties and the dividing line of the counties of Wyoming and McDowell to the Mercer county line, and with the dividing line of the counties of Mercer and Wyoming to the Raleigh county line; thence with the dividing line of the counties of Raleigh and Mercer, Monroe and Raleigh, Greenbrier and Raleigh, Fayette and Greenbrier, Nicholas and Greenbrier, Webster, Greenbrier and Pocahontas, Randolph and Pocahontas, Randolph and Pendleton, to the south-west corner of Hardy county; thence with the dividing line of the counties of Hardy and Tucker, to the Fairfax Stone; thence with the line dividing the states of Maryland and Virginia, to the Pennsylvania line; thence with the line dividing the states of Pennsylvania and Virginia, to the Ohio river; thence down said river, and including the same, to the dividing line between Virginia and Kentucky, and with the said line to the beginning; including within the boundaries of the proposed new state the counties of Logan, Wyoming, Raleigh, Fayette, Nicholas, Webster, Randolph, Tucker, Preston, Monongalia, Marion, Taylor, Barbour, Upshur, Harrison, Lewis, Braxton, Clay, Kanawha, Boone, Wayne, Cabell, Putnam, Mason, Jackson, Roane, Calhoun, Wirt, Gilmer, Ritchie, Wood, Pleasants, Tyler, Doddridge, Wetzel, Marshall, Ohio, Brooke and Hancock.

2. All persons qualified to vote within the boundaries aforesaid, and who shall present themselves at the several places of voting within their respective counties, on the fourth Thursday in October next, shall be allowed to vote on the question of the formation of a new state, as hereinbefore proposed; and it shall be the duty of the commissioners conducting the election at the said several places of voting, at the same time, to cause polls to be taken for the election of delegates to a convention to form a constitution for the government of the proposed state.

3. The convention hereinbefore provided for may change the boundaries described in the first section of this ordinance, so as to include within the proposed state the counties of Greenbrier and Pocahontas, or either of them, and also the counties of Hampshire, Hardy, Morgan, Berkeley and Jefferson, or either of them, and also such other counties as lie contiguous to the said boundaries, or to the counties named in this section; if the said counties to be added, or either of them, by a majority of the votes given, shall declare their wish to form part of the proposed state, and shall elect delegates to the said convention, at elections to be held at the time and in the manner herein provided for.

4. Poll books shall be prepared under the direction of the governor for each place of voting in the several counties hereinbefore mentioned, with two separate columns, one to be headed "For the New State," the other "Against the New State." And it shall be the duty of the commissioners who superintended, and the officers who conducted the election in May last, or such other persons as the governor may appoint, to attend at their respective places of holding elections, and superintend and conduct the election herein provided for. And if the said commissioners and officers shall fail to attend at any such place of holding elections, it shall be lawful for any two freeholders present to act as commissioners in superintending the said election, and to

appoint officers to conduct the same. It shall be the duty of the persons superintending and conducting said election, to employ clerks to record the votes, and to endorse on the respective poll books the expenses of the same.

If on the day herein provided for holding said election, there shall be in any of the said counties any military force, or any hostile assemblage of persons, so as to interfere with a full and free expression of the will of the voters, they may assemble at any other place within their county, and hold an election as herein provided for. It shall be the duty of the commissioners superintending, and officers conducting said election, and the clerks employed to record the votes, each before entering upon the duties of his office, to take, in addition to the oath now required by the general election law, the oath of office prescribed by this convention. It shall be the duty of the officers and commissioners aforesaid, as soon as may be, and not exceeding three days after said election, to aggregate each of the columns of said poll books, and ascertain the number of votes recorded in each, and make a return thereof to the secretary of the commonwealth, in the city of Wheeling, which return shall be in the following form, or to the following effect:

We,..................................commissioners, and...................................... conducting officer, do certify, that we caused an election to be held at.......... ...., in the county of...................................., at which we permitted all persons to vote that were entitled to do so under existing laws, and that offered to vote, and that we have carefully added up each column of our poll books, and find the following result:

For a new state,...........votes; Against a new state,............votes.

Given under our hands, this.........day..................1861.

Under which certificate there shall be added the following affidavit:

.............................County, to-wit:

I,...............................a justice of the peace, (or any officer now authorized by law to administer oaths,) in and for said county, do certify that the above named commissioners and conducting officer severally made oath before me, that the certificate by them above signed is true.

Given under my hand, this.........day of.......................1861.

The original poll books shall be carefully kept by the conducting officers for ninety days after the day of the election, and upon the demand of the executive shall be delivered to such person as he may authorize to demand and receive them.

5. The commissioners conducting the said election in each of said counties shall ascertain, at the same time they ascertain the vote upon the formation of a new state, who has been elected from their county to the convention, hereinbefore provided for, and shall certify to the secretary of the commonwealth the name or names of the person or persons elected to the said convention.

6. It shall be the duty of the governor, on or before the fifteenth day of November next, to ascertain and by proclamation make known the result of the said vote; and if a majority of the votes given within the boundaries mentioned in the first section of this ordinance, shall be in favor of the formation of a new state, he shall so state in his said proclamation, and shall call upon said delegates to meet in the city of Wheeling, on the 26th day of November next, and organize themselves into a convention; and the said con-

vention shall submit, for ratification or rejection, the constitution that may be agreed upon by it, to the qualified voters within the proposed state, to be voted upon by the said voters on the fourth Thursday in December next.

7. The county of Ohio shall elect three delegates; the counties of Harrison, Kanawha, Marion, Marshall, Monongalia, Preston and Wood shall each elect two; and the other counties named in the first section of this ordinance shall each elect one delegate to the said convention. And such other counties as are described in the third section of this ordinance, shall, for every seven thousand of their population according to the census of 1860, be entitled to one delegate, and to an additional delegate for any fraction over thirty-five hundred; but each of said counties shall be entitled to at least one delegate. The said delegates shall receive the same per diem as is now allowed to members of the general assembly; but no person shall receive pay as a member of the general assembly and of the convention at the same time.

8. It shall be the duty of the governor to lay before the general assembly, at its next meeting, for their consent according to the constitution of the United States, the result of the said vote, if it shall be found that a majority of the votes cast be in favor of a new state, and also in favor of the constitution proposed to said voters for their adoption.

9. The new state shall take upon itself a just proportion of the public debt of the commonwealth of Virginia prior to the first day of January, 1861, to be ascertained by charging to it all state expenditures within the limits thereof, and a just proportion of the ordinary expenses of the state government, since any part of said debt was contracted; and deducting therefrom the monies paid into the treasury of the commonwealth from the counties included within the said new state during the same period. All private rights and interests in lands within the proposed state, derived from the laws of Virginia prior to such separation, shall remain valid and secure under the laws of the proposed state, and shall be determined by the laws now existing in the state of Virginia.

The lands within the proposed state, of non-resident proprietors, shall not in any case be taxed higher than the lands of residents therein. No grants of lands or land warrants, issued by the proposed state, shall interfere with any warrant issued from the land office of Virginia prior to the 17th day of April last, which shall be located on lands within the proposed state now liable thereto.

10. When the general assembly shall give its consent to the formation of such new state, it shall forward to the congress of the United States such consent, together with an official copy of such constitution, with the request that the said new state may be admitted into the union of states.

11. The government of the state of Virginia as reorganized by this convention at its session in June last, shall retain, within the territory of the proposed state, undiminished and unimpaired, all the powers and authority with which it has been vested, until the proposed state shall be admitted into the union by the congress of the United States; and nothing in this ordinance contained, or which shall be done in pursuance thereof, shall impair or affect the authority of the said reorganized state government in any county which shall not be included within the proposed state.

A. I. Boreman, *President.*

G. L. Cranmer, *Secretary.*

An ORDINANCE to provide for the punishment of certain offenses, and for other purposes.

Passed August 12, 1861.

The People of Virginia, by their Delegates assembled in Convention at Wheeling, do ordain as follows:

1. Every former incumbent of an office which has been or shall be declared vacant by any declaration or ordinance of this convention, or any act of the general assembly, who shall exercise or attempt to exercise the functions of such office, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not exceeding one thousand dollars and imprisonment in the county jail not exceeding one year.

2. The office of any person who has heretofore taken and subscribed, or shall hereafter take and subscribe the oath or affirmation prescribed by the ordinance of this convention, entitled "An ordinance for the reorganization of the state government," and who, after taking and subscribing such oath or affirmation, shall by any overt act, or by writing or speaking, support and uphold or attempt to support and uphold the usurped government at Richmond or the pretended government of the so-called Confederate States, is hereby declared vacant; and the governor, if satisfactory evidence be produced thereof, upon due notice of the charge to the party to be affected thereby, shall proceed to fill such vacancy or cause the same to be filled in the mode prescribed by the fifth section of the above cited ordinance. But nothing herein contained shall prevent the indictment and punishment of such persons for the crime of perjury.

3. This ordinance shall be in force from its passage, and may be altered or repealed by the general assembly.

A. I. Boreman, *President.*

G. L. Cranmer, *Secretary.*

An ORDINANCE ascertaining and declaring in what cases offices are vacated under the Declaration of June 17, 1861.

Passed August 20, 1861.

The People of Virginia, by their Delegates assembled in Convention at Wheeling, do ordain as follows:

1. Every incumbent of an office held under authority of the commonwealth, or of any county, city or town thereof, who, on and before the seventeenth day of June last, was in rebellion against the government of the United States, or who by any overt act, or by writing or speaking, supported and upheld, or attempted to support and uphold the usurped government at Richmond, or the pretended government of the so-called Confederate States, and who has not, before the passage of this ordinance, taken and subscribed the oath of office prescribed by the ordinance of this convention, entitled "An ordinance for the reorganization of the state government," shall be deemed and taken to have vacated his office; and it shall be the duty of the governor, upon satisfactory evidence thereof, to proceed to fill such vacancy, or cause the same to be filled in the mode prescribed by the fifth section of the above cited ordinance.

2. This ordinance shall be in force from its passage.

A. I. Boreman, *President.*

G. L. Cranmer, *Secretary.*

An ORDINANCE providing for the appointment of Collector of the Public Revenue in certain cases.

Passed August 20, 1861.

The People of Virginia, by their Delegates assembled in Convention at Wheeling, do ordain as follows:

1. If in any county there shall be no sheriff or collector of the public revenues authorized to act under existing laws and the ordinances of this convention, and the county court of such county cannot be convened, or being convened shall fail or refuse to appoint and qualify a collector of the state and county levies and other public dues within the said county, it shall be the duty of the auditor of public accounts, with the approbation of the governor, to appoint a collector of the public revenues for the said county, requiring him to take such oaths and, with proper and sufficient sureties, to be approved by the governor and auditor, to execute such bonds as are required from collectors appointed by the county courts under the said laws and ordinances. The said bonds shall be filed with the auditor of public accounts, who shall transmit certified copies thereof to the clerk of the county court of such county, which copies shall be received as evidence in all the courts of the commonwealth.

2. This ordinance shall be in force from its passage, and may be altered or repealed by the general assembly.

A. I. Boreman, *President.*

G. L. Cranmer, *Secretary.*

An ORDINANCE to provide for the election of Representatives in the Congress of the United States.

Passed August 20, 1861.

The People of Virginia, by their Delegates assembled in Convention at Wheeling, do ordain as follows:

1. In every congressional district of the state where, from any cause, an election of a representative in the congress of the United States was not held on the fourth Thursday of May last, and in the eleventh district where a vacancy now exists, an election for such representative shall be held on the fourth Thursday in October next, which shall be conducted and the result ascertained, declared and certified in the manner directed in the second edition of the code of Virginia.

2. If in consequence of the occupation of any county by armed forces in hostility with or in rebellion against the government of the United States, such election cannot be or is not held in such county, any person entitled to vote therein may vote in any other county of his district. And if no election shall be held at the time appointed in the first section of this ordinance in any congressional district therein mentioned, the governor on receiving satisfactory evidence thereof may, by proclamation or writ, appoint another day for holding such election therein.

3. This ordinance shall be in force from its passage.

A. I. Boreman, *President.*

G. L. Cranmer, *Secretary.*

An ORDINANCE to increase the compensation of the Adjutant General, during the continuance of hostilities within the Commonwealth.

Passed August 20, 1861.

The People of Virginia, by their Delegates assembled in Convention at Wheeling, do ordain as follows:

1. During the continuance of hostilities within the commonwealth, the adjutant general, in addition to the salary now allowed by law, shall be entitled to receive the sum of seven hundred dollars per annum.

2. This ordinance shall be in force from its passage, and may be altered or repealed by the general assembly.

A. I. Boreman, *President.*

G. L. Cranmer, *Secretary.*

ACTS

OF THE

GENERAL ASSEMBLY,

PASSED AT THE

EXTRA SESSION,

HELD JULY FIRST, 1861,

AT THE CITY OF WHEELING.

WHEELING, VIRGINIA:
1861.

ACTS OF THE GENERAL ASSEMBLY.

An ACT making an appropriation for the Civil Contingent Fund.

Passed July 15, 1861.

1. Be it enacted by the General Assembly, That the sum of twenty thousand dollars shall be, and is hereby set apart as a civil contingent fund, for the expenses of the executive department. $20,000.

2. This act shall be in force from its passage.

An ACT authorizing the Treasurer to sell uncurrent bank notes, and authorizing the Governor to direct what bank notes shall be receivable in payments to the State.

Passed July 24, 1861.

1. Be it enacted by the General Assembly, That it shall be lawful for the treasurer to sell, on the best terms he can, such uncurrent Virginia bank notes as shall be paid into the treasury pursuant to existing laws. Treasurer authorized to sell uncurrent Virginia bank notes.

2. The governor, with the consent of the council, during the recess of the general assembly, shall have authority to direct by proclamation, what bank notes shall be receivable in payments to the state. The Governor authorized by proclamation to direct what bank notes shall be receivable in payments to the State.

3. This act shall be in force from its passage.

An ACT to provide for the public health.

Passed July 26, 1861.

1. Be it enacted by the General Assembly of Virginia, That the eleventh, twelfth and thirteenth sections of chapter eighty-six of the code of eighteen hundred and sixty, be amended and re-enacted so as to read as follows: Sections 11, 12, and 13 of chapter 86 of the code of 1860, amended and re-enacted.

11. The governor shall annually appoint and entrust with some fit agent, who shall furnish by mail or otherwise, every citizen of this state, and soldier in the armies of the United States, and in the service of the state, who may apply therefor, with genuine vaccine matter, and directions how to use it, free of charge. Governor to appoint agent to furnish vaccine matter, &c.

Agent to give notice by advertisement that he is ready to furnish vaccine matter without charge to persons mentioned in 11th section.

12. The agent shall immediately on his appointment, give notice by advertisement in two newspapers printed in the city of Wheeling, that he is ready to furnish the genuine vaccine matter, without charge, to any person or persons mentioned in the eleventh section of this act.

$100 appropriated for salary of agent, payable semi-annually.

13. The sum of one hundred dollars annually, is hereby appropriated for the payment of such agent. The same or so much thereof as may be required, shall be paid semi-annually, on the order of the governor, when he shall be satisfied that the agent has faithfully complied with his contract and duty as agent, to the time of such payment.

This act shall be in force from its passage.

An ACT making an appropriation for military purposes.

Passed July 26, 1861.

$175,000 appropriated to procure arms, ammunition, accoutrements and equipments, &c., for volunteer companies.

1. Be it enacted by the General Assembly, That the sum of one hundred and seventy-five thousand dollars be, and is hereby appropriated to procure arms, ammunition, accoutrements and equipments for volunteer companies organized pursuant to law, and pay the expense of transporting, keeping, repairing and distributing the same, including expenses heretofore incurred for such purpose, by order of the governor, to pay and subsistence of volunteers, where ordered into active service of the state; to pay the expenses of collecting munitions of war belonging to the state, which are not in the hands of volunteer companies organized according to law; to pay expenses of organizing volunteer companies, battalions and regiments, and to pay subsistence and equipment of patrols.

2. This act shall be in force from its passage.

An ACT providing for the confinement and safe-keeping of persons sentenced to the Penitentiary.

Passed July 26, 1861.

Governor authorized to use the county jails for the confinement of persons convicted of felonies.

1. Be it enacted, That the governor of this commonwealth, shall have power to convey to any of the county jails in the state, all persons convicted of felonies, and shall have power to use and occupy any of the jails of this commonwealth, for the confinement and safe-keeping of all persons sentenced, or that may hereafter be sentenced to confinement in the penitentiary, until otherwise provided by law.

This act shall be in force from its passage.

A BILL to regulate the salaries of the Cashier and other officers of the Branch of the Exchange Bank of Virginia at Weston.

Passed July 24, 1861.

Salaries of the officers of the Branch of the Exchange Bank of Virginia, at Weston.

1. Be it enacted by the General Assembly of Virginia, That the salaries of the officers of the Branch of the Exchange Bank of Virginia, at Weston, shall not exceed, for the president of said bank, five hundred dollars per annum; for the cashier, fifteen hundred dollars per annum; for first clerk, six hundred dollars per annum; for second clerk, three hundred dollars per annum.

2. Be it further enacted, That this act shall take effect from the passage thereof.

An ACT to authorize the Executive to borrow money on the credit of the State.

Passed July 26, 1861.

Governor, with consent of executive council, or a majority thereof, authorized to borrow on credit of state, any sum or sums of money not exceeding $200,000, not exceeding 34 years.

1. Be it enacted by the General Assembly of Virginia, That the governor, by and with the advice and consent of the executive council, or a majority thereof, be, and he is hereby authorized to borrow, on the credit of the state, any sum or sums of money, not exceeding, in the aggregate, two hundred thousand dollars, at such rate or rates of interest as may be agreed on, and for such time or times, not exceeding thirty-four years, as they may approve.

A sum exceeding by one per centum set apart as a sinking fund as the aggregate of annual interest to be paid thereon.

2. There is hereby appropriated and set apart annually, for the term of thirty-four years, from the date of any such loan or loans, a sum exceeding by one per centum, the aggregate amount of the annual interest to be paid thereon, at the time of its contraction, which sum shall be part of the sinking fund, and shall be applied as directed by article four, section twenty-nine, of the constitution.

Certificates of debt or bonds of the state irredeemable for a period not greater than 34 years. Revenue and property of state pledged for payment thereof.

3. As security for any such loan or loans, certificates of debt, or bonds of the state, irredeemable for any period not greater than thirty-four years, may be issued, and the revenue and property of the state, or any part of either, may be pledged for their redemption.

4. This act shall be in force from its passage.

An ACT to regulate the Volunteer Military force not mustered into the service of the United States.

Passed July 23, 1861.

Volunteer companies to consist of not less than fifty nor more than one hundred rank and file.

1. Be it enacted by the General Assembly, That every volunteer company, whether infantry of the line, light infantry, riflemen, artillery or cavalry, shall consist of not less than fifty nor more than one hundred, rank and file.

Officers of the company.

2. The officers of the company shall be a captain, first lieutenant, second lieutenant, four sergeants and four corporals; but the governor may authorize the election of three lieutenants for any company, whenever he may deem it expedient. The captain and lieutenants shall be commissioned officers.

Captain and lieutenants to be commissioned officers.

Term of enlistment not less than 3 years.

3. Volunteer companies shall be raised by voluntary enlistment for the term of not less than three years, and every member of a uniformed volunteer company, serving for three years successively in one or more companies, shall be exempt from ordinary militia duty. Persons proposing to form a volunteer company, shall sign in duplicate, an agreement to the following effect: "We, whose names are hereby subscribed, agree to become members of a volunteer company of (infantry, riflemen, cavalry, &c., as the case may be,) for the county of ...., for the purpose of supporting and defending the constitution of the United States, and the state government as reorganized by the convention which assembled at Wheeling, on the eleventh day of June, eighteen hundred and sixty-one."

Volunteers serving three years exempt from ordinary militia duty.

Duplicate agreement to be signed.

Five, upon reasonable notice thereof to the others, may elect officers, &c.

4. Whenever a sufficient number of persons, capable of efficiently performing military duty, shall have signed such agreement, a meeting may be called by any five of them, upon reasonable notice thereof to the others, to elect officers of the company; and such meeting, if a majority of the members be present, may appoint the necessary persons to conduct and certify such election.

Conductors to certify such election.

5. When the officers shall be elected as aforesaid, the conductors of the election shall certify such election; and it shall be the duty of the captain, or some other person or persons, appointed for the purpose, by the company, to transmit to the governor the certificate of election, together with the duplicate of the agreement signed as aforesaid, by the members; and a proper certificate or certificates, that the officers and privates of the company have taken the oath required by the ordinance for the reorganization of the state government. And the governor shall thereupon, if he approve the same, commission the captain and lieutenants elected, and shall, subject to the regulations hereinafter prescribed, cause proper arms, accoutrements and ammunition to be furnished to the company.

Certificate of election to be transmitted to Governor, together with the duplicate of agreement.

Oath to be certified.

Governor to commission captain and lieutenants, and furnish arms, &c.

6. The governor shall cause the arms, accoutrements and ammunition which may be at his disposal, to be so distributed among the several volunteer companies, organized as aforesaid, as to secure the services of at least one efficient and well armed volunteer company, recognizing the authority of this government, and subject to its orders, in every county where the organization of such a company may be practicable; and in addition thereto, of an efficient and well armed volunteer force to the amount of at least four hundred rank and file, at the seat of government. And he shall cause the residue of the arms, accoutrements and ammunition, which may be from time to time at his disposal, to be distributed to other volunteer companies organized pursuant to this act, in such manner as he may deem best, to provide for the safety and defense of the people.

Four hundred rank and file, at seat of government.

7. When the captain or other person or persons authorized by any volunteer company organized pursuant to this act, shall apply to the governor for arms, accoutrements and ammunition, the governor, before issuing the same, shall take from the person or persons receiving them, a bond with satisfactory security, in a penalty equal to double the value of the arms, accoutrements and ammunition to be issued, payable to the commonwealth of Virginia, with conditions that he will not deliver the same, or any part thereof, to any member of the company, who shall not have taken the oath required by the ordinance for the reorganization of the state government, nor until such member shall execute bond with good security for the preservation thereof, and the return of the same in good serviceable condition, when demanded. The bonds so taken shall be returned to, and filed in the office of the adjutant general.

Bond with security in a penalty equal to double the value of the arms, &c., to be executed, conditioned, &c.

Bonds so taken to be returned to and filed in the office of the Adjutant General.

8. In case of public emergency, the governor may dispense with all or any of the bonds required by the preceding section.

Governor in certain cases, may dispense with bonds.

9. Every person having in his possession any public arms or accoutrements, shall keep the same in good and serviceable order; and when called on duty, shall promptly appear, with such arms and accoutrements, at the appointed rendezvous. Whenever the governor shall issue an order to that effect, he shall return such arms and accoutrements to the person or persons appointed to collect in and receive the same.

Public arms to be kept in good and serviceable order.

Arms to be returned on order of governor.

10. The governor may order into active service of the state, for such term as he shall prescribe, any volunteer company, battalion or regiment, or any part or detachment thereof. But whenever volunteers shall be ordered into active service, they shall be called out by companies, unless a smaller number be deemed sufficient to perform the duty. In cases of public emergency, the commandant of any volunteer company, battalion or regiment, may order out the same, or any detachment, for the common defense, or to preserve the public peace or enforce the execution of the laws, making report thereof, as soon as practicable, to the governor, whose approval shall in all such cases be equivalent to a previous order.

Governor may order into active service of state any volunteer company, &c., for such terms as he shall prescribe.

Called out by companies.

11. When any volunteer company or regiment, or any detachment thereof, shall be ordered into active service of the state by the governor, they shall be entitled, for the time they are employed in such service, to the same pay and subsistence, camp equipage and other equipments, to which similar officers and soldiers are entitled in the service of the United States; and shall be governed by the articles of war which may be in force at the time, for the government of the troops of the United States.

Pay and subsistence, &c.

To be governed by the articles of war.

12. The uniform and dress of the officers, musicians and privates of volunteers, shall be prescribed by the governor; but any volunteer company may, with permission of the governor, adopt such uniform as a majority of them may desire.

Governor to prescribe dress and uniform.

Each volunteer company may make its own by-laws and regulations.

13. Every volunteer company may make by-laws and regulations for its own government, which shall be obligatory on its own members, unless contrary to the laws of the United States, or of this state.

Report to be made to the adjutant general every three months.

14. The captain of every volunteer company shall, once at least during every three months, transmit to the adjutant general, a fair and accurate account of the number and condition of his company, and of the number, kind and condition of the arms, accoutrements and ammunition, in their possession.

Inspection of strength, &c., may be made by authority of governor.

Power of governor to disband companies.

15. The governor may, from time to time, cause inspection to be made of the strength and condition of any volunteer company or companies, and of the number and condition of their arms, accoutrements, ammunition and equipments. And if upon report thereof made, he be of the opinion that the public interest would be promoted thereby, he may cause such company or companies to be disbanded, and their arms, accoutrements, ammunition and equipments to be returned.

When companies to be disbanded.

Report of same to be made to governor.

16. When any volunteer company shall, for three months together, be reduced in strength below the minimum number required by law, or be for that length of time, without the requisite uniform, it shall be disbanded. In every case of such dissolution, it shall be the duty of the commandant of the regiment in which the same occurs, to report the said dissolution to the governor without delay.

When appeal may be made to governor.

Notice of appeal to be given.

17. Any person thinking himself aggrieved by the proceedings at any election for a commissioned officer of a volunteer company, may appeal to the governor; and the governor may, if he deem it proper, order a new election. But of such appeal, due notice must be given to the adverse party.

How vacancies to be filled.

18. Any vacancy which may occur in the officers of such company, shall be filled by the members thereof, by election, to be conducted and certified as aforesaid. But if such vacancy occur at any election, by the election of an officer to a different office from that which he before held, the vacancy may be filled at once, without further notice.

Governor may suspend for misconduct.

19. The governor, for misconduct within his own knowledge, or upon complaint lodged in writing, supported by affidavit, may suspend any commissioned or non-commissioned officer of a volunteer company or regiment, or may remove him from office, and order an election to fill the vacancy.

Senior captain to command.

Commissioned officers to elect necessary field officers.

20. When volunteer companies parade, join or do duty together, the senior captain present shall command, unless an officer of a higher grade be present. But when a volunteer force, consisting of several companies is called into active service, the commissioned officers of said companies shall elect the necessary field officers to command the same.

21. There shall be at least ten musters in every year, of such company of volunteers.

Ten musters in each year.

22. In each battalion of volunteers, there shall not be less than two hundred rank and file; and every regiment of volunteers, shall consist of two battalions.

Battalions to consist of not less than 200 rank and file.

23. When there shall be in any town, city or county, volunteer companies sufficient to form a battalion or regiment, the governor may organize the same, and for this purpose, may appoint conductors of election, and prescribe the time and place for the commissioned officers of the several companies, to meet together and elect battalion or regimental officers.

Governor may organize battalion or regiment, appoint conductors of election, and prescribe place of meeting.

24. There shall be a colonel, lieutenant-colonel, and two majors for every regiment of volunteers, who shall be the field officers thereof. They shall be elected by the commissioned officers of the volunteer companies composing the regiment; and a majority of the commissioned officers, shall be a quorum to make such election. The field officers shall be commissioned by the governor, upon the certificate of the conductors of the election, and proper evidence of their having taken the oath prescribed by the ordinance for the reorganization of the state government.

Officers of regiments.

How elected.

Quorum.

Field officers to be commissioned by governor.

25. When four or five volunteer companies, in the same city, town or county, containing the requisite number of men, shall agree to unite and be drilled and mustered together, they may constitute a battalion; and the commissioned officers of such companies may elect a major for field officer of such battalion. And when six, seven or eight companies, in the same city, town or county, containing the requisite number of men, agree to unite and be mustered and drilled together, they may form themselves into a regiment, and the commissioned officers of such companies may elect field officers for the same. The commissioned officers of the companies so agreeing to unite, may appoint the time and place for holding such election, appoint conductors thereof, and cause the same, with a correct report of the battalion or regiment, to be certified to the governor, who, if he approve thereof, shall commission the field officers so elected, upon proper evidence that they have taken the oath prescribed by the ordinance for the reorganization of the state government.

What may constitute a battalion.

What may constitute a regiment.

26. Every colonel shall appoint his own staff, and may employ drummers, fifers and buglers, and procure drums, fifes and bugles, as prescribed in the tenth section of chapter twenty-five of the second edition of the code.

Colonel may appoint his own staff, &c.

27. The staff of a colonel shall consist of a quartermaster, paymaster, surgeon, surgeon's mate, an adjutant with the rank of captain, a sergeant major, a quartermaster sergeant, an assistant commissary of subsistence, and when in actual service an additional surgeon's mate and two principal musicians, to be styled drum and fife majors.

What constitutes the staff of a colonel.

Duties of staff officers.

28. The duty of the several officers attached to the colonel's staff shall be as prescribed by the twenty-eighth and twenty-ninth sections of chapter twenty-three of the second edition of the code, and by the by-laws and regulations which govern similar officers in the army of the United States; and each quartermaster and paymaster shall give bond and security according to the said twenty-eighth and twenty-ninth sections.

Quartermaster and paymaster to give bonds.

Battalion or regiment may adopt by-laws for its government.

29. Any volunteer battalion or regiment by its board of officers may adopt such by-laws for its government as may be deemed proper: provided they be consistent with the laws of the United States and of this state. And such by-laws shall have a controlling influence over the by-laws of the several companies composing such battalion or regiment.

Duty of governor to appoint some person or persons to collect together artillery, &c.

30. It shall be the duty of the governor, from time to time, as shall seem to him expedient, to appoint some suitable person or persons to collect together and take charge of all artillery, arms, accoutrements, ammunition, tents and camp equipage belonging to the state, which are not in the hands of volunteer companies pursuant to this act, and to remove the same to such place of safe keeping as the governor shall designate. He shall also appoint suitable persons and adopt such other measures as may be necessary to keep in good order and guard the munitions of war and public property of the state. And any person or persons so appointed shall have all the powers necessary for the execution of the orders of the governor in that behalf; and to secure the execution of such orders, the governor may detail such portion of the military force of the state, not mustered into the service of the United States, as he may deem necessary.

Duty of governor to provide for repair &c., of artillery, arms, &c.

31. It shall be the duty of the governor to provide for the repair, safekeeping, and preserving in good and serviceable condition, the artillery, arms, accoutrements, ammunition, tents and camp equipage belonging to the state.

Expenses incurred by governor to be paid out of the treasury out of any money not otherwise appropriated.

32. The expenses incurred by the governor in arming and equipping volunteers as aforesaid, or in collecting, inspecting, repairing, preserving and safely keeping munitions of war as aforesaid, shall be paid out of any money in the treasury not otherwise appropriated.

33. This act shall take effect from its passage.

An ACT to authorize the County Courts, Corporations, &c., to appropriate money for the public defense.

Passed July 12, 1861.

When levy may be made by county courts for purchase of arms, &c.

1. Be it enacted by the General Assembly, That the several county courts shall be authorized at any monthly or quarterly term, when a majority of the acting justices of the county are in attendance, or when the justices shall have been summoned for such purpose, to order a levy for the purchase of arms, ammunition, accoutrements,

uniforms, tents, or camp equipage for any volunteer company or companies which have been or may be mustered into the service of this state or of the United States within this state. They may also order as aforesaid, a levy for the purpose of providing for the support or relief of the families of volunteers, who shall be or have been mustered into the service of the state or of the United States within this state, or for the purpose of defraying the expenses of any measures deemed necessary for the defense of the county. Such levies shall be collected, accounted for and paid over in the same manner as other county levies.

May order levy for support or relief of families of volunteers.

2. The several county courts shall be authorized as aforesaid to borrow money, from time to time, at a rate of interest not exceeding six per cent per annum, for any of the purposes specified in the preceding section, and to issue bonds or certificates, with or without coupons attached, for the payment of such loans, and the interest thereon; provided, that the amount so borrowed for any county shall not in the aggregate exceed the amount of taxes assessed for state purposes for the year eighteen hundred and sixty, on real and personal property and licenses of all kinds within said county: and provided further, that if a debt be thus contracted, the justices of the county shall be authorized and required thereafter to levy and set apart annually until such debt be extinguished, a sum at least equal to the annual interest and ten per cent upon the principal, to be applied as a sinking fund for the payment of said debt and interest, and for no other use or purpose whatever.

County courts authorized to borrow money at a rate of interest not exceeding six per cent.

Proviso.

The justices authorized and required annually to set apart until such debt be extinguished, a sum at least equal to ten per cent upon the principal to be applied as a sinking fund.

3. No tax shall be charged for affixing the seal of any county to the bonds or certificates which may be issued for the purposes aforesaid.

No tax on seals to such bonds or certificates.

4. The several incorporated towns and cities of this commonwealth are hereby authorized to raise by loan, at six per centum per annum, an amount not exceeding double the amount of taxes assessed for defraying the annual expenses of said towns and cities for the year eighteen hundred and sixty, for the purposes named in the first section of this act; and the said towns and cities are required to set apart annually, a sum at least equal to the interest, and ten per centum upon the principal, to be applied as a sinking fund for the payment of said debt and interest.

Towns and cities authorized to raise by loan at six per cent, a certain amount for the purposes named in the first section of this act.

Ten per cent upon the principal to be applied as a sinking fund.

5. This act shall be in force from its passage.

A BILL prescribing the duties and fixing the compensation of the Clerks of the Senate and House of Delegates.

Passed July 25, 1861.

1. Be it enacted by the General Assembly, That section thirteen of chapter fourteen of the code of eighteen hundred and sixty, be amended and re-enacted so as to read as follows:

Sec. 13 of chap. 14 of code of 1860 amended.

Duty of clerk of senate

Clerk of senate to receive $7 per day.

Duty of clerk of house of delegates.

Clerk of house of delegates to receive $9 per day.

13. The clerk of the senate, who is hereby required to prepare an index to the journal of the senate, and the documents printed by its order, shall receive for his services seven dollars per day, during the session of the general assembly. The clerk of the house of delegates, who is hereby required to keep the rolls, to prepare an index to the journal of the house of delegates, and the documents, to prepare tables of the places of holding separate elections, and of the terms of the courts, as required by the sixteenth chapter, shall receive nine dollars per day during the session of the general assembly. Hereafter, at the expiration of each session of the legislature, it shall be the duty of the clerk of the house of delegates to prepare for publication, a sketch or synopsis of the several acts and joint resolutions passed during the session.

Sec. 15 of chap. 15 of code of 1860 amended.

2. The fifteenth section of chapter fifteen of the code of eighteen hundred and sixty, shall be amended and re-enacted to read as follows:

Clerk of house of delegates keeper of rolls, &c.

Copy certified by clerk of house of delegates. Evidence.

15. The clerk of the house of delegates shall be keeper of the rolls. As such, he shall cause all the acts and joint resolutions of the assembly, to be recorded in a book. He shall have the custody of the acts and joint resolutions of the general assembly and the records and papers of the house of delegates, and when required shall make a copy of any of them, which copy, being certified by him, shall be evidence for any purpose for which the originals would be received, and with as much effect. He shall as soon as practicable after the adjournment of the assembly, prepare the acts and joint resolutions of the previous session for publication, with an index and tables as prescribed by the sixteenth chapter, and furnish to the public printer the manuscript of such acts, resolutions, tables and index, arranged properly for being printed, and he shall superintend the publication thereof.

3. This act shall be in force from its passage.

An ACT exempting uniformed Volunteer Companies from performing ordinary military duty with ununiformed Militia.

Passed July 25, 1861.

Uniformed military companies exempt from performing ordinary military duty with ununiformed militia.

1. Be it enacted by the General Assembly, That uniformed volunteer companies be exempt from performing ordinary military duty with ununiformed militia.

2. This act shall be in force from and after its passage.

An ACT to prohibit County Courts and Overseers of the Poor from making Levies, Appropriations, &c., to aid the Rebellion against the Government of the United States.

Passed July 25, 1861.

1. Be it enacted by the General Assembly of Virginia, That it shall be unlawful for the county courts of the commonwealth to levy any tax upon the citizens of any county, or for the overseers of the poor of any county, city or corporation, to raise monies or make any appropriation for the support and giving aid to the rebellion of the so-called Confederate State governments; and if any officer, or other person or persons shall hereafter collect, or attempt to collect, any such levy, tax or appropriation for the aforesaid purpose, or if any officer or other person or persons shall hereafter pay over to the so-called Confederate government, or agent, or to any other person or persons, any monies, produce, provisions or clothing, hereafter collected by virtue of any such tax, levy or appropriation made by the county courts or the overseers of the poor of any county, city or corporation of the commonwealth for the aforesaid purpose, he or they shall, upon conviction of the same before any court of record of this commonwealth, be fined five thousand dollars and confined in the county jail not exceeding twelve months for every such offense, if he or they may be convicted.

Unlawful for county courts or overseers of the poor to levy any tax for support and aid of rebellion.

Any one convicted of doing the same liable to a fine of $5000 and confinement in county jail not exceeding twelve months.

2. This act shall be in force from its passage.

An ACT appropriating the Public Revenue for the Fiscal Year 1860–61, and a part of the Fiscal Year 1861–62.

Passed July 25, 1861.

1. Be it enacted by the General Assembly, That all monies not otherwise appropriated, which shall come into the public treasury prior to the first day of October, eighteen hundred and sixty-one, shall constitute a general fund, and be appropriated for the fiscal year ending the thirtieth day of September, eighteen hundred and sixty-one, as follows, to-wit:

What unappropriated monies prior to Oct. 1, 1861, constitute a general fund.

To expenses of the general assembly called July first, eighteen hundred and sixty-one, eight thousand dollars.

Expenses of general assembly, $8,000.

For salaries of officers of civil government, out of which there shall be allowed for all clerk hire in the auditor's office at the rate of twelve hundred dollars per annum, and in the treasurer's office at the rate of three hundred dollars per annum, three thousand five hundred dollars.

Salaries of officers of civil government, &c., $3500.

To pay the temporary loans made by the governor, which will fall due before the first day of October next, eleven thousand dollars.

Temporary loans, $11,000.

To defray criminal charges, including jurors, witnesses, jailors, &c., three thousand dollars.

Jurors, witnesses, jailor's charges, &c., $3000.

To support of convicts, including transportation, &c., one thousand dollars.

Support of convicts, &c., $1000.

Contingent expenses of courts, $2000.

To contingent expenses of the courts of the commonwealth, two thousand dollars.

Expenses of militia, $5000.

To expenses of the militia of the state incurred under the reorganized state government, five thousand dollars.

Maintenance of lunatics, &c., $1000.

To maintenance of lunatics in jail, transportation, &c., one thousand dollars.

Commissioners of revenue, $15,000.

To commissioners of the revenue, including services for registration of births, deaths and marriages, fifteen thousand dollars.

Contingent expenses of the offices of auditor, secretary and treasurer, $300.

To pay contingent expenses of the offices of the auditor, secretary of the commonwealth and treasurer, including books, stationery, furniture, fuel and postage, six hundred dollars.

Pay of adjutant general, $300.

To pay of the adjutant general, three hundred dollars.

Judiciary, $3000.

To allowance for the judiciary, including the salaries of judges and attorneys for the commonwealth, three thousand dollars.

Executive council, $2040.

To allowance for the executive council, two thousand and forty dollars.

Messenger, $160.

To allowance for messenger to the executive and council, one hundred and sixty dollars.

Janitor, $150.

To allowance for janitor for the executive officers, legislature and convention, one hundred and fifty dollars.

Arrearages, $1000

To pay arrearages due on account of the expenses of the convention, for the session which commenced on the eleventh day of June, eighteen hundred and sixty-one, one thousand dollars.

Expenses of convention of Aug. 6, 1861, $10,000.

To expenses of the session of the convention to assemble on the first Tuesday in August, eighteen hundred and sixty-one, ten thousand dollars.

Printing, &c., $300.

To pay for printing, stationery, &c., for the convention of June eleventh, eighteen hundred and sixty-one, three hundred dollars.

Public printing, $1500.

To pay for public printing, fifteen hundred dollars.

Auditor to settle with governor expenses of convention of June 11, 1861.

2. Be it further enacted, That the auditor of public accounts settle with the governor his account of monies received as temporary loans, and of disbursements out of the same for pay of members and officers of the convention for the session which commenced June eleventh, eighteen hundred and sixty-one, for printing, stationery and incidental expenses of said convention, and of the executive offices, and that the balance of such moneys be deposited pursuant to law, to the credit of the treasury of Virginia.

What to constitute a general fund.

3. Be it further enacted, That so much of the public revenue as may be received into the public treasury after the thirtieth day of September, eighteen hundred and sixty-one, and the surplus of all other appropriations made prior to that date, and all other monies not otherwise appropriated by law, shall constitute a general fund to defray such expenses authorized by law as not herein particularly provided for, and to defray the current expenses of the commonwealth from the thirtieth of September, eighteen hundred and sixty-one, to the first of April, eighteen hundred and sixty-two. And the

auditor of public accounts is hereby authorized and required to issue his warrants in the same manner as if the sums had been specifically mentioned, subject to such exceptions, limitations and conditions as the general assembly have prescribed or may prescribe by law; provided, that nothing in this act contained shall be so construed as to authorize the auditor of public accounts to issue his warrant in satisfaction of any judgment or decree of any court of law or equity against the commonwealth for a sum exceeding three hundred dollars, without a special appropriation by law.

Auditor not to issue his warrant in satisfaction of any judgment, &c., against commonwealth for a sum exceeding $300 without a special appropriation.

4. Be it further enacted, That no judge, attorney for the commonwealth, or other officer in state service, who has not taken the oath required by the ordinance for the reorganization of the state government, shall be entitled to claim or receive any sum of money by virtue of this act.

No judge, attorney or other officer in state service, not having taken the oath, entitled to receive any money by virtue of this act.

5. This act shall be in force from its passage.

An ACT to amend and re-enact the 2d and 9th sections of chapter 42 of the Code of Virginia.

Passed July 23, 1861.

1. Be it enacted by the General Assembly, That the second and ninth sections of chapter forty-two, of the code of Virginia, be amended and re-enacted, so as to read as follows:

2d and 9th sections of chap. 42 of code amended.

"Sec. 2. The proceeding may be in the circuit court, held in the city of Wheeling. When it is at law, it may be by action or motion."

"Sec. 9. An execution on behalf of the commonwealth from the circuit court in the city of Wheeling, may, if the auditor of public accounts see fit, be directed to any sheriff, sergeant, coroner or constable of any county or corporation, and shall be served by any of the said officers in whose hands the said auditor may cause it to be placed."

Auditor of public accounts may, if he sees fit, direct executions in behalf of the commonwealth to sheriffs, sergeants, &c.

2. This act shall be in force from its passage.

An ACT providing for abolishing the present Board of Public Works, and conferring said powers and duties on the Governor, Lieutenant-Governor and Council.

Passed July 16, 1861.

1. Be it enacted by the General Assembly, That the present board of public works be, and the same is hereby abolished, and the powers and duties of said office shall hereafter be performed by the governor, lieutenant-governor and council.

Board of public works abolished.

Governor, lieut.-governor and council to constitute said board.

2. This act shall be in force from its passage.

An ACT to prevent offences against the Commonwealth, and to provide for the organization of patrols during the war.

Passed July 24, 1861.

Persons opposing by violence, &c., the lawful execution of any ordinance of the convention of June 11, 1861, or any lawful act or order of the governor or any officer of the reorganized state government, subject to a fine of not less than $50 nor more than $1000, and imprisonment for not less than one month nor more than one year.

Refusal or inability to pay fine, time of imprisonment may be increased at discretion, not exceeding two years.

Treason—how punished.

1. Be it enacted by the General Assembly, That any person who shall oppose by violence, or shall aid or incite others to oppose by violence, the lawful execution of any ordinance of the convention which assembled at Wheeling on the eleventh day of June, eighteen hundred and sixty-one, or any act of this legislature, or any lawful act or order of the governor, or any officer of the re-organized state government; or shall aid, council or incite others to attempt the overthrow of said re-organized government, or shall raise any riot, or incite others to raise a riot, or shall by violence, intimidate or with the intent or purpose aforesaid, attempt to intimidate any officer of this government, in the discharge of his lawful duty, or any of the loyal citizens thereof, be subject to a fine of not less than fifty nor more than one thousand dollars, and be imprisoned in the jail of the county for not less than one month nor more than one year; but if upon the trial for said offence, it may appear that the person so charged may be unable or refuses to pay the fine provided for in this section, the court or jury trying the case, may increase the time of imprisonment, at their discretion, not exceeding two years: provided, nevertheless, that any person guilty of treason, may be tried, convicted and punished, as if this act had not passed.

Patrols.

Police powers.

Duties of patrols.

2. The governor is hereby authorized to organize one or more patrols; and the officers and privates of said patrols, when commissioned by the governor and qualified by taking the proper oaths, shall, subject to such regulations and instructions as he may prescribe, have throughout the state, the police powers, which may be lawfully exercised by constables, or the sergeant of the city of Wheeling and his deputies, in the apprehension of persons suspected of crime. It shall be the duty of said patrols to apprehend, and cause to be forthwith taken before a justice to be dealt with according to law, all persons who are found disturbing the peace, or who there shall be just cause to suspect, have been guilty of any offence mentioned in this act. Said patrols shall perform such other duties, in obtaining information, and executing the laws as the governor may require. They shall be removable from office by the governor or legislature, and their office and powers shall terminate when, in the opinion of the executive or legislature, they can be safely dispensed with.

Officers of patrols.

Number in company.

Pay of patrols.

3. There shall be a captain of each patrol, and one sergeant to every fifteen men. No company to consist of more than one hundred men. There shall also be one chief of patrols, who shall rank as lieutenant-colonel, who shall also be appointed by the governor. The officers and privates of such patrols, when in actual service, shall receive the following compensation: chief of patrol, fifty dollars per month; captain, forty dollars per month; sergeants, thirty dollars per month, and privates fifteen dollars per month.

4. The powers vested in the governor by this act, shall be exercised only upon satisfactory evidence, and with the concurrence of a majority of his council.

When powers of governor to be exercised.

5. This act shall take effect from its passage.

A BILL to amend the 33d Section of Chapter 44 of the Code of Virginia.

Passed July 15, 1861.

1. Be it enacted by the General Assembly, That the thirty-third section of chapter forty-four, of the code of eighteen hundred and sixty, be amended and re-enacted so as to read as follows:

33. The executive shall raise from time to time, by temporary loans, so much as may be needed to supply the wants of the treasury; to be refunded by warrants of the auditor of public accounts, within twelve months from the time when said loans are made.

Executive authorized to raise temporary loans to supply the wants of the treasury.

2. This act shall be in force from its passage.

An ACT to provide for declaring certain offices vacant.

Passed July 26, 1861.

1. Be it enacted by the General Assembly, That the governor shall be authorized to issue his proclamation requiring the officers in state service, whether legislative, executive or judicial, within any county or judicial district, to take, within a certain time, to be set forth in said proclamation, the oath or affirmation, specified in the ordinance for the reorganization of the state government, and file the proper evidence of their having taken the same in the office of the secretary of the commonwealth, which proclamation shall be published in some newspaper printed in the city of Wheeling, and in the said county or judicial district, if any there be, and be posted at the front door of the court house of the county, or of the several counties of such judicial district.

Officers in state service within certain time to take oath or affirmation.

Evidence of having taken the same to be filed in office of secretary of commonwealth.

If any officer shall fail to take the said oath or affirmation, and file the proper evidence of his having done so, within the time set forth in any such proclamation, the governor shall be authorized to declare the office vacant, and to cause such vacancy to be filled in the manner prescribed in the fifth section of the ordinance for the reorganization of the state government.

Failure or refusal to take said oath or affirmation, governor to declare such offices vacant, &c.

2. This act shall be in force from its passage.

An ACT to amend and re-enact the 1st Section of Chapter 150 of the Code.

Passed July 25, 1861.

1st section of chapter 150 of the code amended.

1. Be it enacted by the General Assembly of Virginia, That the first section of chapter one hundred and fifty of the code of Virginia, be amended and re-enacted so as to read as follows:

Sec. 1st. Any claim to property, or to any debt, fine or other money, which would be recoverable by action at law, or suit in equity, shall, when the claim is to a fine, if it be limited to an amount not exceeding twenty dollars, and in other cases, if the claim be not of greater value or amount than one hundred dollars, (exclusive of interest,) be cognizable by a justice; and even if the claim be for or against the town or county in which such justice resides. But in every case where the sum or thing in controversy exceeds the amount or value of twenty dollars, the justice shall, upon the application of the defendant, at any time before the trial, remove the cause to the court of the county or corporation wherein the same shall be brought, and the clerk of the said court shall docket the same, and it shall be proceeded in as if it were a motion in said court under the sixth section of chapter one hundred and sixty-seven, of which the notice was docketed at the time such case is so docketed.

2. This act shall be in force from and after its passage.

An ACT staying the Collection of certain Debts.

Passed July 26, 1861.

No writ of fieri facias, order or other process to issue under any judgment or decree heretofore rendered by any court of this commonwealth or justice of the peace.

No sales to be had under any deed of trust heretofore executed.

Levy.

Property to be returned to owner.

Lien.

1. Be it enacted by the General Assembly of Virginia, That no writ of fieri facias or order, or other process, shall issue under any judgment or decree heretofore rendered by any court of record of this commonwealth, or justice of the peace, nor upon any judgment, nor under any decree that may hereafter be rendered by any such court or justice while this act shall remain in force; nor shall there be any sales under any deed of trust heretofore executed, without the consent of all the parties thereto, nor under any decree or judgment now rendered, or that may hereafter be rendered, until otherwise provided for by law. And in any case where a levy has been made prior to the passage of this act, the property so levied upon shall be returned to the owner, and the judgment upon which the levy was made shall be a lien upon all the property, both personal and real, of the debtor, and shall have priority over all other judgments as against the personal property of such debtor.

2. Be it further enacted, that any person may sue for any debt, and maintain any action at law or in equity, and proceed to judgment thereon, and any judgment, execution, order or decree now rendered or issued, or that may hereafter be rendered, shall, in addition to the provisions of chapters one hundred and eighty-six and one hundred

Lien on real and personal estate.

What is included

eighty-eight of the code of eighteen hundred and sixty, constitute a lien on all real estate, both personal and real, of the judgment debtor from and after the docketing of any such judgment, as provided for in the third and fourth sections of chapter one hundred and eighty-six of the code of Virginia. This provision shall include all judgments, whether rendered by the justices of the peace or courts of this commonwealth.

Exceptions.

3. Be it further enacted, that nothing herein contained shall be construed so as to interfere with or abridge the laws now in force in relation to attachments, and actions of detinue and trover, nor in relation to actions of ejectment and unlawful entry and detainer, nor in relation to the prosecution of criminal offenses, and the collection of fines, taxes, licenses, county levies and all debts due the commonwealth: but the same may be proceeded in as now provided for by law. Nor shall this act apply to liabilities on the part of sheriffs, constables or other public officers, either to the state, counties, corporations or individuals, nor to debts hereafter contracted, nor to deeds of trust hereafter executed, but payment of and sales under the same may be enforced and proceeded in as if this act had not been passed. Nor shall the time during which this act is in force be computed in any case in which the statute of limitation may come in question.

Persons leaving their homes to go into the confederate armies 20 days after the passage of this act, to be deemed a non-resident.

May be proceeded against by attachment.

4. Be it further enacted, that any person or persons who shall voluntarily leave his or their place or places of business, home and property, and go into the armies of the so-called confederate states, or who having so gone, shall remain in said armies of the said so-called confederate states twenty days after the passage of this act, shall be deemed a non-resident, and may be proceeded against by attachment, as is now provided for by law against non-residents.

Expiration.

5. This act shall be in force from its passage, and shall remain in force until repealed or changed by the general assembly of Virginia, and if not so repealed or changed, shall expire at the end of the regular session of the general assembly of Virginia.

An ACT to authorize the issue of Bank Notes of a less Denomination than Five Dollars.

Passed July 22, 1861.

9th sec. of chap. 58 amended.

1. Be it enacted by the General Assembly, That the ninth section of the fifty-eighth chapter of the code be amended and re-enacted so as to read as follows: No bank shall issue any bill, note, check, order or other papers which is for a less sum than one dollar, or which, if payable to bearer, is not payable on demand. And no check or draft for less than one dollar shall be paid by an officer of a bank unless it be wholly written, and not in any part of it printed or engraved. Any officer violating this section shall forfeit one hundred dollars.

But it shall be lawful for a bank to issue its notes of the denominations respectively of one, two, three and four dollars, and such notes may be signed by either the president or cashier thereof, or both.

1st section of act passed March 3, 1854, entitled An Act to prevent the circulation of small notes, repealed.

2. The first section of the act of the general assembly, passed March third, eighteen hundred and fifty-four, entitled an act to prevent the circulation of small notes, which provides that it shall be the duty of the commissioners of the revenue and courts, to whom application shall be made for license, to require from each and every person who shall apply for license, an oath that he will not pay out, within the limits of the commonwealth, notes of a less denomination than five dollars, is hereby repealed.

2nd section of same act amended.

3. The second section of the last mentioned act shall be amended and re-enacted to read as follows: In every case where a note of less denomination than one dollar is offered or issued as money, the person so offering or issuing the same shall pay a fine of ten dollars, to be recovered before any justice, alderman or court. And every person whose name is signed on the face of such note, shall be deemed an issuer, within the meaning of this act.

4th section of same act amended.

4. The fourth section of the last mentioned act shall be amended and re-enacted to read as follows: Any person may recover by motion before a single justice or alderman, or before any court, from any person whose name is on the face of the note of a denomination less than one dollar, five times the amount of such note: and such recovery shall be in addition to the fine hereinbefore imposed.

6th section of same act amended.

5. The sixth section of the last mentioned act shall be amended and re-enacted to read as follows: This act shall apply as well to interest-bearing scrip for sums less than one dollar, as to notes of other description; and the word note in this act shall include any paper intended to be used as money or currency, whatever its form may be.

6. This act shall be in force from its passage.

An ACT to Amend and Re-enact the 11th Section of Chapter 188 of the Code.

Passed July 26, 1861.

Sec. 11 of chapter 188 of the code amended.

1. Be it enacted by the General Assembly, That section eleven of chapter one hundred and eighty-eight of the code be amended and re-enacted so as to read as follows:

Jurisdiction of justice.

Sec. 11. On a suggestion by the judgment creditor that by reason of the lien of his writ of *fieri facias*, there is a liability on any person other than the judgment debtor, a summons may be sued out of the said office, or where the judgment does not exceed the jurisdiction of a justice, may be sued out from a justice, against said person to answer such suggestion; the return day of which summons, when sued out from such clerk's office, may be to the next term of the court, although more than ninety days after the date of the summons, and when sued out from a justice, such summons may be made returnable before any justice of the county or corporation wherein the same shall be issued, and shall be made returnable within sixty days at some certain place within such county or corporation to be named in such summons, and within the magisterial district wherein such defendant may reside at the time of the service of such summons.

Returnable before justice.

2. This act shall be in force from its passage.

An ACT fixing the compensation of members of the Executive Council.

Passed July 24, 1861.

1. Be it enacted by the General Assembly, That the members of the executive council shall receive each four dollars per day, for each day's attendance in discharge of the duties of their office.

Pay of members of the executive council.

2. This act shall be in force from its passage.

An ACT altering the compensation to be paid the public Printer, and the printer to the Senate.

Passed July 16, 1861.

1. Be it enacted by the General Assembly, That the eighth section of chapter twenty of the code of eighteen hundred and sixty, be amended and re-enacted so as to read as follows:

8th sec. of chap. 20 of code of 1860, amended.

8. All the work done under the preceding sections of this chapter, all printing executed on account of the adjutant general's office, and any printing not before mentioned, which may be directed by any special act or resolution of the general assembly, shall be paid for at the following rates: Forty cents per thousand ems for plain work; forty cents per token for press work; sixty cents for rule or figure work, and eighty cents per thousand ems for rule and figure work; and all blanks, circulars, handbills, advertisements and other kinds of printing, except book and pamphlet work, shall be paid for at the customary rates of printing for private individuals or concerns.

All of which prices are not to include paper, but the public printer is to furnish the paper at the expense of the state, at cost; and for book binding, the public printer is to be paid the usual prices or rates established among other book binders in the city of Wheeling.

2. The fifteenth section of chapter fourteen of the code of eighteen hundred and sixty, is hereby repealed.

15th sec. of chap. 14, repealed.

3. The thirteenth section of chapter twenty of the code of eighteen hundred and sixty, shall be amended and re-enacted so as to read as follows:

13. The senate may appoint annually, a printer for that body, who shall perform such duties as the senate may require, for which he shall be paid at the rates received by the public printer.

4. This act shall be in force from its passage.

An ACT altering the compensation of the Adjutant General.

Passed July 24, 1861.

Sec. 27 of chapter 23 of the code of 1860, amended.

1. Be it enacted by the General Assembly, That the twenty-seventh section of chapter twenty-three of the code of eighteen hundred and sixty, be amended and re-enacted so as to read as follows:

Pay of adjutant general.

The adjutant general shall receive for his services, five hundred dollars, payable quarterly, as other salaries are paid. He shall reside at or near, and shall keep his office at the seat of government; but when the public service shall render it expedient, the governor may direct him to remove his office to any other place within the state.

Shall keep his office at the seat of government.

2. This act shall be in force from its passage.

JOINT RESOLUTIONS.

No. 1.—Instructing our Senators and requesting our Representatives to vote Men and Money for the Suppression of the Rebellion.

Resolved, by the General Assembly of Virginia, That our senators in congress be instructed and our representatives be requested to vote whatever supplies of men and money may be necessary to enable the federal government to maintain the supremacy of the laws, and to preserve the integrity of the Union.

Resolved, That they be instructed and requested to favor no plan of compromise which does not contemplate the acknowledgment by all sections, of the supremacy of the constitution of the United States.

Resolved, That the governor be requested to communicate the foregoing resolutions to our senators and representatives in congress.

No. 2.—Resolution authorizing the reception of Virginia's share of the proceeds of the Public Lands.

Resolved, by the General Assembly of Virginia, That the treasurer of this commonwealth, or such other person as the governor may appoint by letter of authority under the lesser seal of the commonwealth, be authorized and directed to demand and receive, at the treasury of the United States, so much of the net proceeds of the sales of the public lands as shall have accrued and become payable to this commonwealth under the terms and provisions of the act of the congress of the United States entitled "An act to appropriate the proceeds of the sales of the public lands, and to grant preemption rights," approved the fourth day of September, eighteen hundred and forty-one.

No. 3.—Resolution providing Clothing for three years Volunteers in the service of the United States in Northwestern Virginia.

Resolved, by the General Assembly of Virginia, That the governor be, and is hereby required to apply to the president of the United States for authority to contract with some individual or individuals, on behalf of the general government, for necessary clothing for such of the volunteers of northwestern Virginia as have been or may be mustered into the service of the United States for three years.

Resolved, That a copy of the foregoing resolutions be forwarded to our senators and representatives in congress, with a request that they unite with the governor in his efforts to obtain the authority indicated in the foregoing.

No. 4.—Resolution of thanks to Gen. McClellan and the troops under his command in Northwestern Virginia.

Resolved, by the General Assembly of Virginia, on behalf of the loyal people of the commonwealth, That our prompt acknowledgments and heartfelt thanks are hereby most gratefully tendered to Major-General George B. McClellan, and the officers and troops under his command, for the brilliant victories achieved by them in the battles at Rich Mountain, Laurel Hill and Carrick's Ford.

Resolved, That the determined bravery and patriotism exhibited by the volunteer troops from among our fellow-citizens of Indiana, Pennsylvania, Ohio and Virginia, who have united their arms for the maintenance of constitutional liberty on this continent, and for the protection of the liberties and fortunes and lives of our own people, against the despotic usurpations and assaults of the so-called Confederate States, justly entitle said troops, in the timely succor they have afforded us, to be honored as our true benefactors and friends. Our prayer to the God of battles shall be for their health, for their success on the battle-field, and for their long and continued enjoyment of the permanent peace, soon to be conquered by their valor.

Resolved, That the governor of this commonwealth be, and is hereby requested to transmit a copy of these resolutions to the commanding officer of each division of the Union forces in Western Virginia.

No. 5.—Resolution concerning the money received from the Branch of the Exchange Bank of Virginia at Weston.

Resolved, With the concurrence of the Senate, That the money taken from the Weston Branch of the Exchange Bank of Virginia, be sold for currency, and the premium be paid to said Branch.

Resolved, That out of the currency so obtained, there be placed at the disposal of the board of directors of the Lunatic Asylum west of the Allegheny mountains, five thousand three hundred and sixteen dollars and ninety-eight cents; of which sum three thousand three hundred and sixteen dollars and ninety-eight cents shall be for the payment of work done, services rendered and materials furnished for said Asylum prior to July first, eighteen hundred and sixty-one, and the balance shall be expended in protecting the building until the work shall be resumed.

Resolved, The balance of said currency be deposited in some one or more of the depositories of the state funds to the credit of the treasury of Virginia.

Resolved, That as soon as the state of affairs in the country will allow the further prosecution of said work, it shall be completed.

No. 6.—Resolution that all offices known to be vacated by the officers thereof, by absenting themselves, by giving aid and comfort to the secessionists, or joining the rebel army, shall be declared vacant.

Resolved, That all offices of the commonwealth known to be vacated by the officers, either by absenting themselves, giving aid or comfort to persons in rebellion, or voluntarily joining the rebel army, thereby neglecting the duties of said offices, or by failing or refusing to take the oath prescribed by the ordinance of the convention, shall upon satisfactory evidence to the governor of the facts, be declared vacated, and he shall proceed at once to issue a writ for a new election in all such cases.

No. 7.—Resolution requiring Clerks of County Courts to transmit to Auditor of Public Accounts duplicates of all bonds in their offices given by Sheriffs and Notaries Public, &c.

Resolved, by the General Assembly, That the clerks of the several county courts of this commonwealth be required as early as practicable to transmit to the auditor of public accounts duplicates of all bonds in their offices given by the sheriffs and notaries public, within the period of the terms of their present offices; also, all bonds given by sheriffs in the year eighteen hundred and fifty-eight and subsequent thereto.

No. 8.—Resolution requiring Clerks of Circuit and County Courts to transmit to Auditor of Public Accounts a list of all Jury allowances in their several Courts.

Resolved, by the General Assembly, That the clerks of the several circuit and county courts of this commonwealth be required, as early as practicable, to transmit to the auditor of public accounts a list of all jury allowances since the first day of January, eighteen hundred and sixty-one.

No. 9.—Resolution requiring Clerks of Circuit and County Courts to transmit to Auditor of Public Accounts a list of all entries made to witnesses, &c.

Resolved, by the General Assembly, That the clerks of the several circuit and county courts of this commonwealth be required, as early as practicable, to transmit to the auditor of public accounts a list of all the entries made in their several courts for allowances made to witnesses since the first day of January, eighteen hundred and sixty-one.

No. 10.—Resolution to elect two United States Senators to fill the unexpired terms of R. M. T. Hunter and James M. Mason, late U. S. Senators.

Whereas, R. M. T. Hunter and James M. Mason, late senators from this state in the congress of the United States, have vacated their seats in that body, therefore be it

Resolved, That this house will, with the consent of the senate, proceed by joint vote on next Tuesday, July ninth, at two o'clock P. M., to elect two senators of the United States, to supply the said vacancies, and to serve for the residue of the terms for which said R. M. T. Hunter and James M. Mason were elected.

No. 11.—Resolution electing Secretary of the Commonwealth, Auditor of Public Accounts and Treasurer of the Commonwealth.

Resolved, That this house will proceed on Tuesday next, with the consent of the senate, to the election of a secretary of the commonwealth, auditor of public accounts and treasurer of the commonwealth.

No. 12.—Resolution electing a Brigadier General.

Resolved, That on Tuesday next, at two o'clock P. M., (sixteenth,) with the consent of the senate, this house, by joint ballot, proceed to the election of a brigadier general.

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ACTS

OF THE

GENERAL ASSEMBLY,

PASSED AT THE

REGULAR SESSION,

HELD DECEMBER 2, 1861,

AT THE CITY OF WHEELING.

WHEELING, VIRGINIA:
1862.

ACTS OF THE GENERAL ASSEMBLY.

CHAP. 1.—An ACT authorizing the Secretary of the Commonwealth to administer oaths.

Passed December 10, 1861.

Secretary of commonwealth authorized to administer oaths.

Sec. 1. Be it enacted by the General Assembly, That the secretary of the commonwealth be, and he is hereby authorized to administer all such oaths as justices of the peace are authorized to administer.

2. This act shall take effect from its passage.

CHAP. 2.—An ACT to provide for the organization of the County Court of Alexandria, and other purposes.

Passed December 10, 1861.

Preamble.

1. Whereas, It appears to the General Assembly that an election was held on the twentieth day of November, eighteen hundred and sixty-one, in the county of Alexandria, for justices of the peace and other county officers, to supply vacancies created under the operation of the ordinance entitled, "An Ordinance ascertaining and declaring in what cases offices are vacated under the declaration of June nineteenth, eighteen hundred and sixty-one,"—and it is important to provide for the speedy organization of the county court of said county, and for the qualification of said officers:

Legality of commissions.

Be it enacted by the General Assembly, That the commissions issued and delivered by the governor of this commonwealth to the justices so elected, shall be legal and valid; and the said justices, or such number of them as the law requires, after having qualified as such by taking the several oaths prescribed by law, are authorized and empowered to hold the county courts of said county, and perform all the duties and functions of justices of the peace therein, any existing law to the contrary notwithstanding; and it may be lawful for such court to hold a special term on the third Monday of the present month.

Powers and duties.

Special term.

Clerk.

2. Be it further enacted, That it shall be lawful for the person chosen at said election to be clerk of said court, to administer (before he himself has qualified according to law) all necessary oaths to the said justices; and the said oaths, so taken and administered, shall be as effectual, to all intents and purposes, as if taken and administered after the qualification of said clerk.

3. This act shall be in force from its passage.

CHAP. 3—An ACT repealing the 17th Section of Chapter 64 of the Code of 1860.

Passed December 12, 1861.

Section 17 of chapter 64 of the code of 1860 repealed.

1. Be it enacted by the General Assembly of Virginia, That the seventeenth section of chapter sixty-four of the code of eighteen hundred and sixty, be and the same is hereby repealed.

2. This act shall be in force from its passage.

CHAP. 4.—An ACT to amend and re-enact the 24th Section of Chapter 8 of the Code of 1860.

Passed December 13, 1861.

Sec. 24 of chap. 8 of the code of 1860 amended and re-enacted.

1. Be it enacted by the General Assembly, That the twenty-fourth section of chapter eight of the code of eighteen hundred and sixty, be and the same is hereby amended and re-enacted so as to read as follows:

Sec. 24. Every such officer, other than a justice of the peace, shall, either in the proper court or before a judge of a circuit court, in vacation or in term, take such oaths and give such bond within sixty days after his election; except a sheriff, who shall be allowed one hundred and twenty days in which to qualify and give the bonds of office. And if any officer shall fail to do so within the time prescribed, his office shall be deemed vacant: but his qualification, unless he be elected to fill a vacancy, shall not be deemed to take effect before the day appointed in the preceeding section for his term of office to commence.

2. This act shall take effect from its passage.

CHAP. 5.—An ACT making claims for damages, in certain cases, cognizable by a Justice of the Peace.

Passed December 12, 1861.

Damages to real or personal estate, or for breach of any contract, where they do not exceed $20, cognizable by a justice of the peace.

1. Be it enacted by the General Assembly, That any claim for damages sustained to real or personal estate, or breach of any contract, where the amount sought to be recovered does not exceed twenty dollars, shall be cognizable by a justice of the peace.

2. This act shall be in force from its passage.

CHAP. 6.—An ACT for the relief of Fernando A. Robinson, Clerk-elect of the Circuit Court of Harrison county, and of Beverly R. Waugh, Clerk-elect of the Circuit Court of Jackson county.

Passed December 12, 1861.

1. Be it enacted by the General Assembly, That upon Fernando A. Robinson, of Harrison county, and Beverly R. Waugh, of Jackson

county, taking the oaths required to be taken by clerks of courts, before any judge of a circuit court, in vacation, or before any county court, and filing with the clerks of Jackson and Harrison county courts, respectively, bond, with security, in the penalty of three thousand dollars, conditioned according to law, they shall be entitled to all the rights and privileges, and have all the power and authority of clerks of the circuit courts of Harrison and Jackson counties, to the same extent as if they had qualified before the said courts in term within the time required by law.

May qualify before any judge of a circuit court, in vacation, or before the county court.

Bonds with security to be filed with the clerks of Jackson and Harrison county courts respectively.

Penalty of bond, $3,000.

2. This act shall take effect from its passage.

Chap. 7.—An ACT releasing certain claims of the Commonwealth against the estate of Ebin Lipscomb.

Passed December 17, 1861.

1. Be it enacted by the General Assembly, That the costs incurred by the commonwealth in a prosecution against Ebin Lipscomb, in the county of Preston, for homicide, and all the expenses incurred by the commonwealth against said Lipscomb as a lunatic, be and the same are hereby released. And that the real estate in Preston county that said Lipscomb died seized of, be released from any liability for said costs and expenses.

Costs of commonwealth in a prosecution against Ebin Lipscomb, of Preston county, for homicide, and also against said Ebin Lipscomb as a lunatic released.

2. This act shall be in force from its passage.

Chap. 8.—An ACT to authorize the Auditor of Public Accounts to appoint Commissioners of the Revenue in certain cases.

Passed December 19, 1861.

1. Be it enacted by the General Assembly, That the auditor of public accounts is hereby authorized and required in counties and towns of this commonwealth, where the commissioners' books of said counties and towns can not be found and where commissioners have not been elected under the re-organized government of Virginia, to appoint commissioners of the revenue to assess the taxes due the commonwealth for the year eighteen hundred and sixty-one, and to forward books for that purpose to said commissioners.

Auditor of public accounts authorized and required in counties and towns of this commonwealth to appoint commissioners of the revenue in certain cases.

To forward books to said commissioners.

2. This act shall be in force from its passage.

Chap. 9.—An ACT to amend and re-enact the 4th Section of Chapter 121 of the Code of 1860.

Passed December 19, 1861.

1. Be it enacted by the General Assembly of Virginia, That the fourth section of chapter one hundred and twenty-one of the code of eighteen hundred and sixty be amended and re-enacted so as to read as follows:

Sec. 4 chap. 121 of the code of 1860 amended and re-enacted.

Privy examination of wife, who, with her husband has signed any writing purporting to convey any real estate, may be had before a justice of the court, or the clerk thereof, authorized to admit such writing to record, or before a justice of the peace, or a notary public, within the United States, or a commissioner appointed within the same, by the governor of the state.

Sec. 4. When a husband and his wife have signed a writing purporting to convey any real estate, she may appear before a court authorized to admit such writing to record, or before the clerk thereof in his office, and if, on being examined privily and apart from her husband by one of the justices of the court, or by the clerk thereof, and having such writing fully explained to her, she acknowledge the same to be her act, and declare that she had executed the same willingly, and does not wish to detract it, such privy examination, acknowledgment, and declaration shall be then recorded in such court, or in the clerk's office, or she may appear before a justice of the peace or a notary public within the United States, or a commissioner appointed within the same by the governor of the state, and such justice, notary, or commissioner may so examine her, and if, after such explanation, she make such acknowledgment and declaration, shall certify the same on, or annexed to, the said writing, to the following effect—that is to say:

State (*or Territory, or District*) *of* ————, *County* (*or Corporation*) *of* ————, to-wit:

Form of certificate.

I, ————, a commissioner appointed by the governor of the state of Virginia for the said state, or territory, or district of ————, (or I, ————, a justice of the peace; or I, ————, a notary public for the county or corporation of ————) do hereby certify that E F, the wife of G H, whose names are signed to the writing above, or hereunto annexed, bearing date on —— day of ———, personally appeared before me, in the county or corporation aforesaid, (or, if it be a commissioner, in the state, or territory, or district aforesaid,) and being duly examined by me, privily and apart from her husband, and having the writing aforesaid fully explained to her, she, the said E F, acknowledged the said writing to be her act, and declared that she had willingly executed the same, and does not wish to retract it.

Given under my hand this, the —— day ———.

———— ————.

If the wife be without the United States, before whom such examination may be had.

Or, if the wife be without the United States, she may appear before any minister, plenipotentiary, charge d' affaires, consul-general, consul, vice-consul, or commercial agent appointed by the government of the United States to any foreign country, or before any court of such country, or the mayor or other chief magistrate of any city, town, or corporation therein, who shall examine her and make such explanation as is above required where the wife is in the United States, and if then she make such acknowledgment and declaration as is so required, the person having such appointment, or such mayor or chief magistrate, or the proper officer of such court, shall give a certificate, under his official seal, of the said examination, explanation, and declaration, to the effect required when the wife is in the United States, and upon, or annexed to, said writing in like manner.

2. This act shall be in force from its passage.

CHAP. 10.—An ACT requiring Clerks of Regimental Courts to make out lists of fines for the year 1860, collectable in 1861, together with a copy of the Sheriff's receipts for said fines, and to transmit said lists and copies to the Auditor of Public Accounts.

Passed January 3, 1862.

Duties of clerks of regimental courts of inquiry.

1. Be it enacted by the General Assembly, That the clerks of the regimental courts of inquiry make out a list of all the fines assessed by their several battalion and regimental courts in the year eighteen hundred and sixty, collectable in the year eighteen hundred and sixty-one, in the form now required by law, and shall forthwith transmit the same to the auditor of public accounts, together with a copy of the sheriff's receipts for the tickets for said fines, where they have been placed in the sheriff's hands for collection previous to the passage of this act.

Where tickets for fines have not been placed in sheriff's hands, said clerk make out list of tickets for same and deliver same to sheriffs, taking receipt for same.

Copy of receipt to be transmitted to auditor of public accounts by said clerks.

2. If from any cause the tickets for the aforesaid fines have not been so placed in the sheriff's hands for collection, the aforesaid clerks shall immediately make out a list of tickets for said fines and deliver them to the respective sheriffs of their several counties, and take from said sheriff his receipt for the same, a copy of which receipt shall be forthwith transmitted to the auditor of public accounts by said clerks.

Fees of clerks.

3. The clerks shall each be allowed by their respective regimental courts of inquiry the same fees for the services herein required to be performed, as now authorized by law, to be paid out of any money arising from militia fines.

4. This act shall be in force from its passage.

CHAP. 11.—An ACT to amend and re-enact the 38th Section of an Act passed March 30, 1860, entitled "An Act for the better organization of the Militia of the Commonwealth."

Passed January 3, 1862.

Sec. 38 of an act entitled "An act for the better organization of the militia of the commonwealth amended and re-enacted.

1. Be it enacted by the General Assembly, That the thirty-eighth section of an act passed March thirtieth, eighteen hundred and sixty, entitled "An act for the better organization of the militia of the commonwealth," be amended and re-enacted so as to read as follows:

Officer with rank of adjutant, when to be appointed by governor.

His duties.

Delinquents to be returned to board of officers.

If in any case a regiment shall fail to elect its officers and organize according to law, the governor shall appoint an officer from the regiment, with the rank of adjutant, who shall enroll and muster the several companies of such regiments, and the regiment itself, at the times required by law; and if the bounds of the company districts cannot be ascertained, he shall arrange and establish such districts. At each muster held by him, he shall call the rolls, or cause the same to be called, and shall make return of all delinquents to a board of three officers, to be appointed by the governor. The said board shall

Duties of said board. Required to appoint a clerk. His compensation.

be invested with the same powers, in regard to the assessment and remission of fines, as the regimental courts of inquiry. They shall cause lists to be made out and placed in the hands of the sheriffs, and returns to be made to the auditor in the manner now prescribed by law. They shall appoint a clerk, who shall receive the same compensation now allowed to clerks of courts of inquiry for similar services; and the said adjutant, two dollars for each day actually employed in enrolling and mustering the companies and regiment.

2. This act shall be in force from its passage.

CHAP. 12.—An ACT repealing the 2d, 3d and 4th Sections of the Act organizing Patrols, passed 24th of July, 1861.

Passed January 7, 1862.

Sections 2, 3 and 4 of the act passed July 24th, 1861, repealed.

1. Be it enacted by the General Assembly, That the second, third and fourth sections of the act entitled "An act to prevent offenses against the commonwealth, and to provide for the organization of patrols during the war," be and the same is hereby repealed.

2. This act shall be in force from its passage.

CHAP. 13.—An ACT for the relief of John E. Highland, Constable elect of the 3d District of Harrison County.

Passed January 8, 1862.

John E. Highland, constable, to file bond, with security, within forty days from the passage of this act, with the clerk of Harrison county court.

Thereupon, to have same power and authority as if he had qualified within the legal period.

1. Be it enacted by the General Assembly, That upon John E. Highland, of Harrison county, taking the oaths required to be taken by constables, and filing with the clerk of Harrison county court, bond with security in such penalty, as the said court may require, conditioned according to law, within forty days from the passage of this act, he shall be entitled to all the rights and privileges, and have all the power and authority of constables in the county of Harrison, to the same extent as if he had qualified within the time required by law.

2. This act shall be in force from its passage.

CHAP. 14.—An ACT to establish a Branch Bank at Charleston, in the County of Kanawha.

Passed January 8, 1862.

Office of discount and deposit of N. W. Bank of Virginia and M. & M. Bank of Wheeling, at Charleston, Kanawha county.

Capital stock.

1. Be it enacted by the General Assembly, That it shall be lawful for the Northwestern Bank of Virginia, or the Merchants' and Mechanics' Bank of Wheeling, to establish an office of discount and deposit in the town of Charleston, Kanawha county, with a capital stock of not less than fifty nor more than two hundred thousand dol-

lars, to be provided by a transfer of capital stock from the bank electing to establish such office and its branches, or from the contingent funds of said bank, or by the creation and sale of new stock, to the requisite amount, or by a combination of these modes, as the stockholders in general meeting may determine and direct; but no sale of the stock of the said bank, for the purpose aforesaid, shall be for less than par. The said office, when established, shall be under the direction of seven directors, to be appointed in like manner, and to have the powers, and be subject to the duties, as provided by law in respect to other offices of discount and deposit of the bank electing to establish such office as aforesaid.

No sale of stock for purposes of this act to be less than par.

Directors—how appointed.

2. This act shall be in force from and after its passage.

CHAP. 15.—An ACT incorporating the Farmers' and Drovers' Bank of Morgantown.

Passed January 10, 1862.

1. Be it enacted by the General Assembly of Virginia, That it shall be lawful to establish a bank in the town of Morgantown, in the county of Monongalia, the capital stock of which shall not be less than fifty thousand dollars, nor more than two hundred thousand dollars, to be raised by subscriptions, in shares of one hundred dollars each. Books of subscription for raising such capital stock, under the superintendence of Joseph Shuttlesworth, William Lazier, Francis Madera, Henry Dering, A. S. Vance, James V. Baughner, Andrew Brown, Asa Lemley, Frederick Furman, Joel Bowlby and Joseph Snider, shall be opened in the town of Morgantown, in the county of Monongalia, within ninety days after the passage of this act, and remain open until stock to the amount of fifty thousand dollars or more shall be subscribed, when said bank shall be authorized to commence business under the restrictions hereinafter imposed: and the directors elected, as hereinafter prescribed, may order the said books to be opened until the whole capital stock is subscribed, and open and close the same previous thereto at their discretion.

Charter for bank in Morgantown.

Its capital stock.

Subscriptions.

By whom, when and where books to be opened.

Authorized to commence business when fifty thousand dollars or more are subscribed.

2. Any five of the commissioners aforesaid, shall have power to act, and their rights, powers and duties, in relation to said bank, shall be in all respects, so far as applicable, such as are prescribed by the code of Virginia, section two, chapter fifty-seven. A majority of the commissioners at Morgantown may select any additional places for opening books of subscription to the said bank, and appoint commissioners to attend the same.

Any five of the commissioners may act.

To be governed by sec. 2, chap. 57 of the code.

Additional places for opening books of subscription may be selected.

3. The said bank shall be called the Farmers' and Drovers' Bank of Morgantown, and by this name and style shall be a corporation, with all the rights, powers and privileges conferred, and restraints imposed upon banks of this commonwealth, by chapters fifty-six, fifty-seven and fifty-eight of the code of Virginia, so far as applicable with the exception hereinafter named and embodied in this act; and

Name and style of said bank.

Subject to chaps. 56, 57 and 58 of the code.

subject also to the restraints and privileges of the act entitled "An act to amend the tenth section of chapter fifty-seven of the code of Virginia," passed April sixth, eighteen hundred and fifty-three, and of the act entitled "An act to amend the first, second, third and fourth sections of chapter thirty-nine of the code of Virginia, in respect to the tax on bank dividends, and repealing the fifth section of said act," passed April the sixth, eighteen hundred and fifty-three, and of all acts amendatory thereof, applicable to such a corporation.

Amount of paper circulation.

4. The total amount of the paper circulation of said bank, shall never exceed five times the amount of coin in possession of, and actually the property of the said bank.

Proportion of coin to paper circulation to be at least one to five.

5. If the coin of said bank be reduced to less than one-fifth of its paper circulation, said bank shall thenceforth make no new loan or discount until its coin shall bear to its paper circulation, at least the proportion of one to five.

Cer. of deposit &c. to be payable in specie.

6. The said bank shall give no certificate of deposit, draft or evidence of debt, which is not payable in specie.

Quarterly statements, what to exhibit.

7. Every quarterly statement of said bank, in addition to the information which is required by the code of Virginia to be made, shall also exhibit the aggregate debt due by such bank; the outstanding debt due to such bank; its discounts of inland and foreign bills of exchange; its loans to directors; its specie circulation and deposits on the first day of each month of the quarter it embraces.

Competency of directors.

8. No person shall be entitled to serve as a director in said bank, unless he is a *bona fide* stockholder in the same.

Duration of charter 20 years.

9. The duration of this charter, shall be twenty years from the passage of this act.

10. This act shall be in force from its passage.

CHAP. 16.—An ACT for the relief of Henry S. Mahon, Commissioner of Revenue elect for Jackson county.

Passed January 10, 1862.

Time in which to take the oath.

1. Be it enacted by the General Assembly, That upon Henry S. Mahon, of Jackson county, within sixty days from the passage of this act, taking the oath prescribed by law, to be taken by commissioners of the revenue, before the county court of Jackson, and giving the necessary bond and security, he shall be entitled to all the rights and privileges, and have all the power and authority appertaining to the office of commissioner of the revenue to the same extent as if he had been qualified within the time required by existing laws.

Bond and security.

2. This act shall be in force from its passage.

CHAP. 17.—An ACT authorizing the Holliday's Cove Turnpike Company to transfer a portion of their Road to Brooke County.

Passed January 10, 1862.

1. Be it enacted by the General Assembly, That the Holliday's Cove Turnpike Company are hereby authorized to transfer to the county of Brooke, that part of their road known as the Wellsburg Branch, upon the conditions that the county place said branch road on the same footing of other county roads, under the special road law for said county.

Holliday's Cove Turnpike Company authorized to transfer portion of their road.

Conditions.

2. Be it further enacted, That the said Holliday's Cove Turnpike Company shall retain the main branch of their road, on the same terms and conditions in regard to stock and directory, as it was before said branch was constructed, namely: that the state holds two-fifths and individual stockholders three-fifths of said main branch.

On what conditions main branch retained.

3. This act shall be in force from its passage.

CHAP. 18.—An ACT to amend the 2d Section of an Act to provide for the opening and repairing Roads and Bridges in Brooke and Hancock Counties.

Passed January 10, 1862.

1. Be it enacted by the General Assembly, That the second section of an act to provide for the opening and repairing of public roads, and for repairing and building bridges, in the counties of Brooke and Hancock, passed March second, eighteen hundred and fifty-eight, be amended and re-enacted to read as follows:

Section 2 of act passed March 2, 1858, entitled "An act to provide for opening and repairing of public roads, &c. amended and re-enacted.

"Sec. 2. The voters of each of said districts shall, on the first Saturday in March, eighteen hundred and fifty-nine, and on the first Saturday in March every two years thereafter, elect a commissioner of roads; the election of the first district to be held at Hukill's school house; in the second, at Fowler's tavern; in the third, at Wallace's school house; and in the county of Hancock at the usual places of voting for justices of the peace. Said elections to be held and conducted by any justice of the peace of the several districts, who shall qualify the persons elected, and report such election to the next county court, and inform the commissioner of his election. The commissioner, when so elected, failing to qualify before any justice of the peace for said counties, respectively, within fifteen days from the date of his election, shall forfeit and pay the sum of fifteen dollars, to be expended on the roads of his district, recoverable by suit in the name of the county, for the use of the district, before any justice of the peace. The county court shall fill, by appointment, any vacancy that may occur in the office of road commissioner."

Election of commissioners.

Elections, where held.

By whom conducted.

In what time commissioners to qualify.

Penalty for failure to qualify.

Vacancies, how filled.

2. This act shall be in force from its passage.

CHAP. 19.—An ACT incorporating the Parkersburg and Sandy Railroad Company.

Passed January 10, 1862.

By whom books of subscription may be opened.

1. Be it enacted by the General Assembly, That it shall be lawful to open books in the town of Parkersburg, in the county of Wood, under the superintendence of James Cook, Beverly Smith, George W. Henderson, P. G. Van Winkle, A. G. Leonard, Daniel Rhodes, Andrew Flesher, E. S. Mahon, James F. Scott, Daniel Frost, Daniel Polsley, John Hall, John D. Thompson, George W. Moredock, Charles Wagoner, Thomas Thornburg, George T. Miller, John Everett, sen., P. S. Smith, William Mahon, William Radcliff, John Adams, John B. Bowen, William W. Brumfield, and William Dixon, or any three of them, and in such other place or places, and under the direction of such agents as any three of the above named commissioners may designate, for the purpose of receiving subscriptions to the amount of one million five hundred thousand dollars, to be divided in shares of one hundred dollars each, to constitute a joint capital stock, for the purpose of constructing a railroad from Parkersburg, in the county of Wood, by the way of Ravenswood, Point Pleasant, Guyandotte, Ceredo, to the mouth of Sandy river, in Wayne county, and providing every necessary for convenient transportation on the same.

Amount.

Shares.

To be governed by the code of Virginia.

2. The books shall be opened, and the subscriptions received in the manner provided by the code of Virginia, prescribing general regulations for the incorporation of railroad companies. And when one thousand shares of the capital stock shall have been subscribed, the subscribers, their executors, administrators and assigns, shall be and are hereby incorporated into a company politic and corporate, by the name and style of "The Parkersburg and Sandy Railroad Company," subject to all the provisions, and entitled to all the benefits of the aforesaid code, except so far as the provisions of this act are or may be inconsistent therewith.

When one thousand shares subscribed, to be incorporated.

Name of company.

Power to increase capital stock.

3. If the capital stock of said company shall be insufficient for the purposes of this act, the said company shall have power, and are hereby authorized, to increase the same, by the addition of as many shares as may be deemed necessary. And the said company shall have power to borrow money for the purposes of carrying out the objects of this act, and to issue proper certificates, or evidences of such loans, and to pledge the property of the company for the same, and the interest that may accrue thereon. And the said company shall have power to construct so much of their said railroad as the amount subscribed may allow, and shall have six years from the passage of this act to commence the same.

Power to borrow money, &c.

Time in which to commence construction of road.

4. So much and such parts of the code of Virginia hereinbefore recited, or of any other act or acts, as may be inconsistent with any of the provisions of this act, shall be held not to apply to the company hereby incorporated, so far as the same may affect the charter

granted by this act; provided, however, that for all other purposes, the same shall have the same force and effect as if this act had never been passed.

5. This act shall be in force from its passage.

CHAP. 20.—An ACT authorizing the County Court of Hancock County to devote an appropriation made to "arm the militia," under an act of January 19th, 1861, to the benefit of Volunteers in the service of the State and of the United States.

Passed January 10, 1862.

When the county court of Hancock may make an appropriat on for the benefit of volunteers in the service of this state and of the United States.

1. Be it enacted by the General Assembly, That it shall be lawful for the county court of Hancock county, at any monthly or quarterly term, all the acting justices having been duly summoned to consider the subject, and a majority of them being present, to direct that the amount, or any part thereof, ordered to be raised and expended at the levy term of said court in June last, and the provision of "An act to authorize the county courts of any incorporated city or town, to arm the militia of their respective counties, cities and towns, and to provide means therefor," passed January nineteenth, eighteen hundred and sixty-one, be applied to the purchase of arms, ammunition, accoutrements, uniforms, tents or camp equipage, for any volunteer company or companies which have been, or may be mustered into the service of the state, or of the United States, within this state—to provide for the support or the relief of the families of such volunteers, or to defraying the expenses of any measures deemed necessary for the defense of the county, and to the payment of just and reasonable claims for money already expended or services rendered for said purposes.

2. This act shall be in force from its passage.

CHAP. 21.—An ACT to incorporate the Elk River Railroad Company.

Passed January 13, 1862.

By whom and where books may be opened.

1. Be it enacted by the General Assembly, That it shall be lawful to open books in the town of Clarksburg, under the direction of B. Despard, Waldo P. Goff and John Davis; and in the town of Weston, under the direction of R. P. Camden, P. M. Hale and Minter Bailey; and in the town of Sutton, under the direction of Felix Sutton, Adonizah Harris and John Morriscio; and in the town of Charleston, under the direction of Benjamin H. Smith, John M. Doddridge and Frederick Walker; and in the town of Guyandotte, under the direction of John Laidley, Percival Smith and F. D. Bauhring; and in the town of Catlettsburg, under the direction of George M. Brown,

Levi J. Hampton and Jeremiah Welman, or any two of them in each place named, and at such other place or places and under the direction of such agents as any three of the above named commissioners may designate, for the purpose of receiving subscriptions to the amount of twenty thousand shares of one hundred dollars each, to constitute a joint capital stock, for the purpose of constructing a railroad from a point on the Northwestern Virginia Railroad, at or near Clarksburg by the way of Weston and Sutton to intersect the Covington and Ohio Railroad at or near Charleston, in the county of Kanawha, with the right to extend branches thereof to Point Pleasant, in the county of Mason, and to the Kentucky line, and providing every necessary for convenient transportation on the same.

Number of shares and amount of same.

Right to extend branches.

2. The said books to be opened and the subscriptions received in the manner prescribed in the code of Virginia, prescribing general regulations for the incorporation of railroad companies, and when two thousand shares of the said capital stock shall have been subscribed, the subscribers, their executors, administrators and assigns shall be, and are hereby incorporated into a company politic and corporate, by the name and style of "The Elk River Railroad Company," subject to all the provisions, and entitled to all the benefits of the aforesaid code, except so far as the provisions of this act are or may be inconsistent therewith.

Governed by code of Virginia.

Incorporated, when.

Name of company.

3. The company hereby incorporated shall have full right and privilege, and is hereby authorized and empowered to intersect and connect their said railroad with railroads mentioned in the first section of this act, at the points therein designated, and shall be entitled to all the benefits of the fourth section of the act passed March sixth, eighteen hundred and forty-seven, entitled "An act to authorize the Baltimore and Ohio Railroad Company to construct the extension of their railroad through the territory of Virginia."

Rights and powers.

4. If the capital stock of said company shall be insufficient for the purposes of this act, the said company shall have power, and are hereby authorized to increase the same, by the addition of as many shares as may be deemed necessary; and the said company shall have power to borrow money for the purpose of carrying on the object of this act, and to pledge the property of the company for the payment of the same, and for the interest that may accrue thereon; and said company shall have power to construct so much of their said railroad as the amount subscribed may allow, and shall have five years from the passage of this act to commence the same.

Power to increase their stock.

May borrow money.

Time in which to commence same.

5. So much and such parts of the code of Virginia hereinbefore recited, or of any other act or acts as may be inconsistent with any of the provisions of this act, shall be held not to apply to the company hereby incorporated, so far as the same may affect the charter hereby granted by this act; provided, however, that for all other purposes the same shall have the same force and effect as if this act had never been passed.

All acts inconsistent with this act, not to apply.

6. This act shall be in force from its passage.

CHAP. 22.—An ACT appropriating Twenty-one Thousand Six Hundred and Eighty-four Dollars to the Northwestern Lunatic Asylum.

Passed January 14, 1862.

1. Be it enacted by the General Assembly, That the sum of twenty-one thousand six hundred and eighty-four dollars be, and the same is hereby appropriated, out of any money in the treasury not otherwise appropriated, to the Northwestern Lunatic Asylum, to be expended under the direction of the board of directors, and so much as may be necessary shall be devoted to completing the south wing of said building, being the balance of the amount taken from the branch of the Exchange Bank of Virginia, at Weston, and deposited in the treasury, by joint resolution number five, of the extra session of the legislature, in July last.

$21,684 appropriated to N. W. Lunatic Asylum.

How expended.

2. This act shall take effect from the passage thereof.

Commencement.

CHAP. 23.—An ACT for the relief of Alva Teter, Sheriff of Upshur County.

Passed January 15, 1862.

1. Be it enacted by the General Assembly, That the auditor of public accounts be authorized to allow Alva Teter, sheriff of Upshur county, a credit of one hundred and twenty-five dollars, which money was taxes collected by his deputy (John Teter,) and was taken by an armed force of secessionists from said deputy in November, eighteen hundred and sixty-one.

Allowance of $125 to Alva Teter, sheriff of Upshur county.

2. This act shall be in force from its passage.

Commencement.

CHAP. 24.—An ACT entitled an Act to repeal Section 8, Chapter 25, of the Code.

Passed January 15, 1862.

1. Be it enacted by the General Assembly, That section eight of chapter twenty-five of the code, be and the same is hereby repealed.

Sec. 8, chap. 25 of the code repealed.

2. This act shall take effect from its passage.

Commencement.

CHAP. 25.—An ACT entitled an Act to amend and re-enact Section 9 of Chapter 25 of the Code.

Passed January 15, 1862.

Sec. 9, chap. 25 of code amended and re-enacted.

1. Be it enacted by the General Assembly, That the ninth section of chapter twenty-five of the code, be amended and re-enacted so as to read as follows: The colonel conducting the training of officers

shall employ a drummer and fifer to attend the training, who shall be allowed, each, the sum of two dollars per day for their services, to be paid in the manner prescribed by law for other claims for militia service.

Commencement. 2. This act shall be in force from its passage.

CHAP. 26.—An ACT authorizing the re-assessment of certain lands belonging to Wm. D. Farnsworth.

Passed January 15, 1862.

The commissioner of the revenue in Upshur county authorized to re-assess one hundred and forty-five acres of land belonging to Wm. D. Farnsworth, of Upshur county.

1. Be it enacted by the General Assembly, That the commissioner of the revenue for the county of Upshur be, and is hereby authorized to re-assess certain lands, containing one hundred and forty-five acres, in said county, belonging to William D. Farnsworth.

Commencement. 2. This act shall be in force from its passage.

CHAP. 27.—An ACT for the relief of John Slack, Clerk elect of the Circuit Court of Kanawha County.

Passed January 15, 1862.

Time in which John Slack, of Kanawha county, to take the oath.

Penalty of bond.

Power and authority.

1. Be it enacted by the General Assembly, That upon John Slack, of Kanawha county, taking the oaths required to be taken by clerks of courts, before any judge of a circuit court, in vacation, or before any county court, within sixty days from the passage of this act, and filing with the clerk of Kanawha county court, bond with good security, in the penalty of three thousand dollars, conditioned according to law, he shall be entitled to all the rights and privileges, and have all the power and authority of clerk of the circuit court of Kanawha county, to the same extent as if he had qualified before the said court, in term, within the time required by law.

Commencement. 2. This act shall be in force from its passage.

CHAP. 28.—An ACT repealing an Act entitled an Act to authorize the Executive to borrow money on the credit of the State.

Passed January 16, 1862.

The act authorizing the executive to borrow money on the credit of the state repealed.

1. Be it enacted by the General Assembly, That an act entitled an act to authorize the executive to borrow money on the credit of the state, passed July twenty-sixth, eighteen hundred and sixty-one, be and the same is hereby repealed.

Commencement. 2. This act shall be in force from its passage.

CHAP. 29.—An ACT making an appropriation to defray the expenses of the Convention.

Passed January 16, 1862.

1. Be it enacted by the General Assembly, That the sum of sixteen thousand five hundred dollars be, and is hereby appropriated to pay the members and officers, and defray all the other expenses of the convention, which assembled at Wheeling on the twenty-sixth day of November, eighteen hundred and sixty-one.

Appropriation of $16,500 to pay members and officers of convention.

2. This act shall be in force from its passage.

Commencement.

CHAP. 30.—An ACT to regulate the inspection of Salt in the county of Kanawha.

Passed January 16, 1862.

1. Be it enacted by the General Assembly, That the governor shall, immediately after the passage of this act, and annually thereafter, in the months of October or November, appoint a person of good repute, and who is a skillful judge of the quality of salt, to be inspector of salt for the county of Kanawha, for one year, commencing on the first day of January next ensuing; and to continue in office until his successor is appointed; and in case of the death of the inspector so appointed, or his refusal, inability or neglect to act, the governor shall, as soon as notified thereof, proceed to appoint a successor. Said inspector may appoint, with the consent of the governor, one or more deputies; but the principal shall be liable for the acts of his deputies. The governor may remove from office the inspector or his deputies at any time for neglect, incapacity or misconduct.

Governor to appoint inspector of salt for Kanawha county.

Term of office.

In case of refusal, inability or neglect to act, governor to appoint successor.

Deputies.

Principal liable.

Power of governor to remove.

2. All barrels containing salt offered for inspection shall be made of good seasoned materials, with ten hoops well nailed and lined, not exceeding thirty inches in length, and eighteen inches in diameter across the head within the chine, and not exceeding twenty-eight pounds in weight.

Barrels, how made.

3. The inspector, or his deputy, shall attend when required, and inspect all salt prepared for transportation, and if of merchantable quality, brand each package with the name of the county, and of the manufacturer, as well as the quality, whether No. 1 or No. 2, and the gross weight for irregular barrels, in durable and distinct characters. If the weight of the package shall exceed twenty-eight pounds, he shall also mark the tare thereon. Packages of uniform weight intended to be sold by the package, shall contain so many pounds net as are marked thereon, and not liable to a falling off exceeding ten pounds after transportation.

Duties of inspector and deputies.

4. For inspecting, branding and weighing each package as aforesaid, the inspector shall receive one cent, provided that if actual tare is required to be branded, one cent additional shall be received for each barrel; and provided always that the manufacturer shall furnish the aid required.

Compensation of inspector.

Penalty for shipping or transporting salt without inspection.

5. No salt shall be shipped or transported from the county without its inspection, under a penalty of fifty cents for each package; to be recovered before a justice of the peace, or any court having competent jurisdiction.

Time which packages shall remain before inspection.

6. All packages shall be at least forty-eight hours after packing before being inspected, unless the inspector shall decide after examination that the salt is sufficiently drained.

Additional duties of inspector.

7. The inspector shall keep a book in which he shall enter an account of the quantity and quality of the salt inspected by him, distinguishing the parties for whom it may have been inspected; and shall enter therein all the salt sold without inspection, which each manufacturer shall return monthly to him, under the penalty of twenty dollars for each monthly failure; and shall also return quarterly, to the county clerk's office an abstract, under oath, of all the salt inspected by him, or so returned by the manufacturer.

All acts or parts of acts coming within purview of this act repealed.

8. All acts or parts of acts coming within the purview of this act are hereby repealed.

Commencement.

9. This act shall take effect from its passage.

CHAP. 31.—An ACT providing for the election of Governor, Lieutenant Governor and Attorney General.

Passed January 17, 1862.

Preamble.

1. Whereas, By an ordinance of the convention which assembled in the city of Wheeling on the eleventh day of June, eighteen hundred and sixty-one, entitled "An Ordinance for the reorganization of the State Government," it is made the duty of the general assembly, to provide by law for the election of governor and lieutenant governor for the state of Virginia, by the people, as soon as in their judgment such election can be properly held, and, whereas, in the judgment of this general assembly, an election for said officers, as well as for attorney general, can be held at the time hereinafter mentioned, therefore,

When election for governor, lieut.-governor and attorney general to be held.

Be it enacted, That on the twenty-second day of May, eighteen hundred and sixty-two, an election shall be held in the several counties and corporations entitled to representation, for the election of governor, lieutenant-governor and attorney general to fill the unexpired terms of said offices.

Term.

When to qualify and assume duties of office.

The said officers shall qualify as such, and assume the duties of their respective offices on the first day of July, eighteen hundred and sixty-two.

Commencement.

2. This act shall be in force from its passage.

CHAP. 32.—An ACT authorizing the Stockholders and Governor to appoint Directors to declare dividends for the Branch of the Exchange Bank of Virginia, at Weston.

Passed January 17, 1862.

1. Whereas, It appears to the General Assembly, That since the passage of the ordinance of the convention which assembled at Richmond, on the thirteenth day of February, eighteen hundred and sixty-one, assuming to sever the state's connection with the Government of the United States; all communication and intercourse between the branch Exchange Bank of Virginia, at Weston, and the parent bank and its other branches, have been cut off, and there being no power upon the part of the stockholders or directors of said branch, at Weston, to elect directors or declare dividends.

Preamble.

Therefore, Be it enacted by the General Assembly, That the stockholders of said bank, may meet in the town of Weston on the first Monday in April next, and proceed to elect three directors for said branch, and the governor shall be authorized to appoint four directors on the part of the state, and said directors may proceed to declare dividends, independent of the mother bank; and said branch of the Exchange Bank of Virginia, at Weston, shall not be liable for any of the debts of the mother bank, or its branches, nor be compelled to receive any of the notes or bills of the mother bank or any of its branches, other than the branch at Weston, for any debts due said branch; and the stockholders shall meet annually on the first Monday in April, to appoint directors on the part of the stockholders; and the governor shall on the part of the state annually appoint four directors as aforesaid, and the directors may declare dividends semi-annually.

When and where stockholders to meet.

Governor authorized to appoint four directors.

May declare dividends.

Not liable for the debts of mother bank or branches.

When stockholders to meet.

Semi-annual dividends.

2. This act shall be in force from its passage.

Commencement

CHAP. 33.—An ACT authorizing Commandants of Regiments and Battalions to convene the Regimental and Battalion Courts of Enquiry of their respective Regiments and Battalions at any time in the year 1862.

Passed January 24, 1862.

1. Be it enacted by the General Assembly of Virginia, That commandants of regiments and battalions shall have power, and are hereby authorized, to convene the regimental and battalion courts of enquiry of their respective regiments and battalions, at any time within the year eighteen hundred and sixty-two that they shall think it necessary, anything in the provisions of existing laws to the contrary notwithstanding: Provided, however, that not more than two such courts for each regiment and battalion shall be held in said year.

Powers of commandants of regiments and battalions.

Proviso.

2. This act shall be in force from its passage.

Commencement.

CHAP. 34.—An ACT to incorporate the Savings Bank of Weston.

Passed January 24, 1862.

Savings Bank incorporated.

1. Be it enacted by the General Assembly, That Henry Flesher, Allen Simpson, J. G. Vandervort, A. C. Hale and P. M. Hale, and such other persons as may hereafter be associated with them, be and are hereby made a body politic and corporate, by the name and style of "The Savings Bank of Weston," and by that name are made subject to and have the benefit of all the provisions of the fifty-seventh and fifty-ninth chapters of the code of Virginia, and the provisions of this act amending the tenth section of chapter fifty-seven of the code of Virginia, passed April ninth, eighteen hundred and fifty-three.

Shares.

Capital stock.

2. The capital stock of said bank shall be divided into shares of fifty dollars each, and the subscription thereto shall be made, received and paid at such times and in such installments as may be prescribed by a majority of the persons named in the first section of this act. The amount of capital stock of said bank shall be fixed by a majority of said persons, so that the same does not exceed the sum of one hundred thousand dollars.

Number of board of directors.

3. Five members shall constitute a board of directors.

Commencement.

4. This act shall be in force from its passage.

CHAP. 35.—An ACT transferring the State Stock in "The Marshall and Ohio Turnpike Company," to Marshall and Ohio counties.

Passed January 24, 1862.

Preamble.

Whereas, It is represented to the General Assembly, That the president and directors of "The Marshall and Ohio Turnpike Company" have failed to open and keep their road in repair, as required by the acts of assembly authorizing the construction of the same: Therefore,

Stock held by state transferred and vested in the counties of Marshall and Ohio.

Proportions.

Control.

1. Be it enacted by the General Assembly of Virginia, That all the stock now owned by this commonwealth in "The Marshall and Ohio Turnpike Company," be and the same is hereby transferred to, and vested in the counties of Marshall and Ohio, in the following proportions, that is to say nine-tenths of said stock to the county of Marshall, and one-tenth to the county of Ohio, to be under the control of the county courts of said counties, respectively.

Lawful for county courts of Marshall and Ohio to transfer their proportions of stock to any company hereafter lawfully organized.

2. Be it further enacted, That it shall be lawful for the said county courts of Marshall and Ohio counties severally, to transfer the proportions, or either of them, or any part or parts of the said stock, vested by this act in the said counties of Marshall and Ohio, to any company that shall hereafter be lawfully organized, empowered and bound to open and keep in good repair said road. But until such transfer is made, the county court of Marshall county shall have

entire control over all that portion of said road lying in the county of Marshall, and the county court of Ohio county shall have control over all that portion of said road lying in the county of Ohio; and it shall be the duties of said courts to have their respective portions of said road worked and repaired, either by tolls to be collected therefrom, or by the mode prescribed, or that may hereafter be prescribed by law for the opening and keeping in repair of other county roads in said counties of Marshall and Ohio, respectively, or otherwise, in such manner and upon such terms as they may severally determine.

Until such transfer the county courts of Marshall and Ohio to have entire control of their respective portions of road. Duties of said courts.

3. This act shall be in force from its passage.

Commencement.

Chap. 36.—An ACT to incorporate the Mount Vernon Insurance Company of Alexandria, Virginia.

Passed January 24, 1862.

1. Be it enacted by the General Assembly of Virginia, That James T. Close, Thomas Emigh, Gilbert S. Minor, John Hawxhurst, Lewis Bailey, Silas Bigelow, William M. Turner, and others, who may associate under this act, are hereby created and declared to be a body politic and corporate, by the name and style of the Mount Vernon Insurance Company, and by that name may sue and be sued, plead and be impleaded, in all the courts of law and equity, in this state and elsewhere, and to make and have a common seal, and the same to break, alter or renew at their pleasure; to ordain and establish such by-laws, ordinances and regulations, and generally to do every act and thing necessary to carry into effect this act, or to promote the object and design of this corporation: Provided, such by-laws, ordinances, regulations or acts be not inconsistent with the laws of the state, or United States.

Mount Vernon Insurance company incorporated.

Proviso.

2. To make insurance upon dwellings, houses, stores and all other kind of buildings, in town or country, and upon household furniture, merchandise, and other property, against loss or damage by fire, to make insurances on the lives and health of white persons or slaves, to cause themselves to be insured, when deemed expedient, against risks upon which they have made insurances; to grant annuities; to receive endowments; to contract for reversionary interests; to guarantee the payment of promissory notes, bills of exchange or other evidences of debt; to make insurances upon vessels, freights, goods, wares, merchandise, specie, bullion, profits, commissions, bank notes, bottomry or respondentia interests; and to make all and every insurance connected with marine risks, and risks of transportation and navigation.

Its powers, &c.

3. To receive money on deposit and grant certificates therefor, in accordance with the conditions set forth in sections four and five, chapter fifty-nine, of the code of Virginia, but in no case are such deposits, or the certificates therefor, to be held liable to make good any policy of insurance issued by this company.

How affairs of the company are to be managed.
How many constitute a quorum.
How elected.
Vacancies in the board.
President, vice president, secretary, treasurer and general agent, how elected.
Term of office.

4. The affairs of said company shall be managed by a board of directors, consisting of sixteen members, or stockholders, seven of whom shall constitute a quorum. Said directors shall be elected by ballot, from among the members and stockholders of said company, in general meeting assembled, at such time and place as said corporation in their by-laws shall appoint, of which election public notice shall be given ten days preceding such election, which shall be held under the inspection of three members or stockholders, not being directors; to be appointed previous to every election, by the board of directors; and such election shall be made by ballot, and by a plurality of the votes of the members or stockholders, or their proxies present; allowing to each member or stockholder one vote for every fifty dollars in capital stock represented in said company; all vacancies happening in said board may be filled by the remaining directors for the remainder of the term for which they were elected, and shall continue in office until others shall be chosen in their places; and other elections shall be held periodically, once in three years thereafter, for the choice of new directors. The said board of directors shall elect *viva voce* a president, vice president, secretary, treasurer, and general agent, who may hold their offices for and during the term of three years, and until others are elected in their places.

Conditions of membership by insurance.
Funds of company.
For what members and stockholders not liable.

5. Every person who shall become a member of said company, by effecting an insurance therein, on the premium note plan, shall, before he receives his policy, deposit his promissory note for such a sum of money as shall be determined by the directors, together with such an amount in cash as may be required by the directors. The said deposit note shall be payable in part or the whole, at any time when the directors shall deem the same requisite for the payment of losses or damages, and such other incidental expenses as shall be necessary for transacting the business of said company, and for the redemption of all bonds, obligations and notes which may be incurred or issued by said company, and at the expiration of the term of insurance, the said note or such part thereof as shall remain unpaid, after deducting all losses and expenses, and other liabilities accruing in said term, shall be relinquished and given up to the maker thereof, or his representative. The funds of this company, however divided, may be invested in or loaned on a stock or real security, to be used in purchasing or discounting bonds, bills, notes, or other paper; provided, that no greater rate of discount shall be taken than one-half of one per cent for thirty days, except as regards the bonds or certificates of debt, of this state, the United States, or of corporations, but the interest may in any case be paid in advance. But the members or stockholders of this company shall not be liable for any loss, damage or responsibility other than their premium notes, and the property they may have in the capital stock and funds of the company, and any profits arising therefrom undivided, and nothing herein contained shall be so construed as to authorize said company to issue and put into circulation any note in the nature of a bank note.

6. Every member of said company, who shall have given a premium note, shall be bound to pay for losses and expenses, and other liabilities accruing in and to said company in proportion to the amount of his deposit note, and all buildings insured by said company, together with the right, title and interest of the assured to the lands on which they stand shall be, and are hereby pledged to said company; and said company shall have a lien thereon in the nature of a mortgage, to the amount of his deposit note which shall continue until such losses and expenses are settled; the lien to take effect whenever the said company shall file with, and have entered on record by the clerk of the county wherein the property is situated, a memorandum of the name of the individual insured, a description of the property, the amount of the deposit note, and the term for which said policy shall continue; and the clerk of the county shall post the same at the front door of the court house, with a list of deeds admitted to record.

Who bound to pay for losses &c.

Lien.

7. Suits at law may be maintained by said corporations against any of its members for the collection of said deposit notes, or any assessments thereon, or for any other cause relating to the business of said corporation; also, suits at law may be prosecuted and maintained by any member or stockholder against said corporation, for losses or damages by fire, if payment is withheld more than four months after the losses are duly proved and notified to the company, agreeable to the conditions of the policy, and no member of the corporation, not being in his individual capacity a party to such suits, shall be incompetent as a witness in any such cause, on account of his being a member or stockholder of said company.

Suits at law may be maintained by whom and when.

Members of corporation not incompetent as witnesses, when

8. The directors may, after receiving notice of any loss or damage by fire, sustained by any member or stockholder, and ascertaining the same, or after the rendition of any judgment as aforesaid against the company, said loss or damage, settle and determine the sums to be paid by the several members thereof as their respective portions of such loss, and publish the same in such manner as they shall see fit, or as the by-laws shall have prescribed; and the sum to be paid by each member shall always be in proportion to the original amount of his deposit note or notes, and shall be paid to the treasurer, within thirty days next after the publication of such notice, or a demand from them or their authorized agents; and if any member shall for the pace of thirty days after such notice neglect or refuse to pay the sum assessed upon him as his proportion of any loss as aforesaid, in such case the directors may sue for and recover the whole amount of his deposit note or notes, with costs of suit; and the amount thus collected shall remain in the treasury of the company subject to the payment of such losses and expenses as have or may thereafter accrue, and the balance if any remain shall be returned to the party from whom it was collected on demand, after thirty days from the expiration of the time for which insurance was made.

Directors may settle and determine sums to be paid by members, when.

Of whom Executive committee to consist.

9. The executive committee shall consist of the president, secretary and treasurer of the company, and such other members or stockholders as may be added, and when the board of directors are not in session, may exercise all the powers vested in the company, (except as shall be otherwise provided by the board of directors in the by-laws of the company,) a majority of whom may constitute a quorum to do business.

Company may effect all kinds of insurance.

10. This company may effect all kinds of insurance either on the cash or stock plan, without premium notes, or may require premium notes and a cash amount in addition, as hereinbefore provided for; but all persons insuring on the premium note plan shall be bound to pay his or her share of all losses and expenses incurred by the company, whether the same arise out of losses or expenses growing out of a cash, stock or a premium note insurance.

Capital stock not less than $20 000, nor more than $500.000.

Of what it may consist.

11. The capital stock of this company shall not be less than twenty thousand dollars, nor more than five hundred thousand dollars; and may consist of cash premiums, and premium notes received upon risks taken by the company; or such other capital (in shares of fifty dollars each) as may by the by-laws be added.

Power of directors as to dividends.

12. The directors shall have power to declare such dividends of the profits of the company as they may deem proper, provided that no dividend shall be declared, when in the opinion of the directory, or a majority thereof, the capital stock would be impaired thereby.

Place of location.

By-laws.

13. This company shall be located at Alexandria, Alexandria county, Virginia, or at such other place as may agreed upon by the board of directors. The board of directors may make such by-laws as they may deem proper or necessary, not inconsistent with this charter.

Commencement.

Made perpetual.

Proviso.

14. This act shall be in force from its passage, and is hereby made perpetual: Provided, nevertheless, that the legislature of Virginia reserves to itself the power of altering, amending or repealing any of the provisions thereof after the expiration of the year one thousand eight hundred and eighty-two.

CHAP. 37.—An ACT for the relief of Andrew Poundstone.

Passed January 25, 1862.

Auditor of public accounts authorized to pay Andrew Poundstone $15.00.

1. Be it enacted by the General Assembly, That the auditor of public accounts be directed to pay Andrew Poundstone, deputy clerk of Upshur county, the sum of fifteen dollars for examining the commissioner's books of Upshur county, according to law in the absence of the clerk of the county court.

Commencement.

2. This act shall be in force from its passage.

CHAP. 38.—An ACT for the relief of Floyd Neely, Sheriff of Doddridge county.

Passed January 28, 1862.

1. Be it enacted by the General Assembly of Virginia, That the auditor of public accounts be, and he is hereby directed to credit Floyd Neely, Sheriff of Doddridge county, with the sum of twenty-six dollars and twenty-five cents, it being four per centum upon six hundred and fifty-five dollars paid by said Sheriff into the treasury of the State.

Auditor of public accounts directed to credit Floyd Neely with $26.20.

2. This act shall be in force from its passage.

Commencement.

CHAP. 39.—An ACT for the relief of Allen Simpson, Sheriff of Lewis County.

Passed January 25, 1862.

1. Be it enacted by the General Assembly of Virginia, That Allen Simpson, Sheriff of Lewis county, be and is hereby allowed six months from the delivery to him of the books of the commissioner of the revenue of said county, for the year one thousand eight hundred and sixty-one, in which to pay any sum ordered to be paid out of the county levy of said county, for the said year.

Allen Simpson allowed six months from receipt of books of commissioner of revenue to pay any sum ordered to be paid out of county levy of said county for the said year.

2. This act shall be in force from its passage.

Commencement.

CHAP. 40.—An ACT to provide for the better working, and keeping in repair, the Moundsville Branch of the Fairmont and Wheeling Turnpike Road, in the county of Marshall.

Passed January 25, 1862.

Whereas, it is represented to the General Assembly of Virginia, that all the stock in the Moundsville branch of the Fairmont and Wheeling Turnpike Road is now owned by this commonwealth, and that the superintendent of said Turnpike has failed to open and keep such Turnpike in proper repair. Therefore,

Preamble.

1. Be it enacted by the General Assembly, That all the stock now owned by this commonwealth in the Moundsville Branch of the Fairmont and Wheeling Turnpike Road, be and the same is hereby transferred to, and vested in the county of Marshall.

Stock transferred to and vested in the county of Marshall.

2. Be it further enacted, That all such stock, as well as such Turnpike Road, shall be under the control of the county court of said county of Marshall, which shall have power to appoint a superintendent over the same, and also a gate-keeper, upon such terms as it may deem best calculated to secure the completion and permanent keeping up of said road; provided, however, that a majority of the acting Justices of said county shall be present, and voting for such appointments, or having been first duly summoned for that purpose.

Stock and turnpike road under control of county of Marshall county.

Power of county court.

Proviso.

Duty of county court.

3. Be it further enacted, That until such time as such superintendent and gate-keeper shall be appointed, agreeable to the provisions of this act, it shall be the duty of the county court of Marshall, to cause said road to be worked and kept in proper repair, by the same means, and by the same laws regulating the working and keeping in repair of other county roads in said county of Marshall.

Commencement.

4. This act shall be in force from and after the passage thereof.

CHAP. 41.—An ACT for the compensation of Special Commissioners; and other officers, conducting the elections held on the 27th of September and 24th of October, 1861.

Passed January 28, 1862.

Auditor of public accounts to pay special commissioners appointed by governor to superintend the elections held on 27th Sept. and 24th Oct. 1861.

1. Be it enacted by the General Assembly, That the auditor of public accounts pay out of the treasury, to the special commissioners appointed by the Governor, to superintend the elections held on the twenty-seventh of September, and the twenty-fourth of October, one thousand eight hundred and sixty-one, the sum of one dollar and fifty cents per day, for the time actually employed, upon the said commissioners producing to the auditor, an affidavit of the amount due for said service, also a certificate from the governor of their appointment.

To produce affidavit and certificate.

County court authorized to compensate clerks, conductors &c.

2. The county court may compensate clerks, conductors and commissioners, attending the elections held on the twenty-seventh of September and the twenty-fourth day of October, eighteen hundred and sixty-one: provided, however, that the special commissioners, appointed by the Governor, shall receive nothing under this section.

Proviso.

Commencement.

3. This act shall be in force from its passage.

CHAP. 42.—An ACT to take the sense of the voters of that part of Preston county, taken from Randolph county, whether or not they will be attached to the county of Tucker.

Passed January 29, 1862.

Preamble.

Whereas, it is represented to the General Assembly of Virginia, that that portion of Preston county that formerly belonged to Randolph county is desirous to be attached to Tucker county.

The duty of the officers conucting elections at German Settlement precinct in Preston county.

1. Be it therefore enacted by the General Assembly of Virginia, That it shall be the duty of the officers conducting elections at the precinct known as the German Settlement in the county of Preston, to open polls on the fourth Thursday in May next, to ascertain whether a majority of the legally qualified voters in that portion of the county of Preston that formerly belonged to the county of Randolph are in favor of being attached to the county of Tucker.

2. The polls to be opened shall be headed thus: For being attached—Against being attached. The names of those in favor shall be written in the first column, and the names of those opposed shall be written in the second column. And it shall be the duty of the officers conducting said election, to be governed by the existing laws providing for the election of members of the general assembly: and other officers. How headed. Officers conducting elections how governed.

3. It shall be the duty of said officers so conducting the election, that when the result is fully known, within ten days after said election, to transmit the poll books to the clerk of the county court of Preston county, to be filed and preserved by him, and forward a certified copy of the result of said election to the Governor, at the city of Wheeling. Duty of officers.

4. This act shall be in force from its passage. Commencement.

CHAP. 43.—An ACT for the re-assessment of certain lands in the county of Kanawha.

Passed January 29, 1862.

Whereas, certain tracts of land in the salt district of Kanawha county have greatly depreciated in value from the exhaustion of their mineral wealth since the last assessment of the lands of the State, Preamble.

1. Be it therefore enacted by the General Assembly, That it shall be lawful for the county court of Kanawha county, at its March term, to appoint a commissioner, whose duty it shall be to re-value the lands known as the salt lands, in the said county, where the mineral wealth has been exhausted since the last assessment, and be governed in all respects by the act passed March the tenth, one thousand eight hundred and fifty-six, entitled, "An act to re-assess the lands throughout the commonwealth", except where it may be incompatible with the provisions of this act. He shall complete his books and return the same to the county court at its next May term, and the said lands shall be taxed in the year one thousand eight hundred and sixty-two, according to the valuation of the said commissioner. Commissioner. His duty.

2. The county court may provide for the compensation of the commissioner and cause the same to be levied upon the lands re-assessed. Compensation.

3. This act shall be in force from its passage. Commencement.

CHAP. 44.—An ACT changing the manner of examining polls and certifying elections for certain officers in this Commonwealth.

Passed January 31, 1862.

Duties of commissioners.

1. Be it enacted by the General Assembly, That in all cases of elections for election districts, or senatorial or congressional districts, the commissioners superintending the elections at the court houses of the several counties or corporations forming such districts shall within three days after such election is concluded, deliver a certified statement of the result of the election in said county, (to be ascertained in the manner now prescribed by law) to the clerk of the county court of such county, whose duty it shall be, as soon as he may be able, to record such result in a book for that purpose to be kept in his office, and transmit a certified copy of such result (which shall be written in words and not in figures) to the clerk of the county court of the county first named in the law describing such district, whose duty it shall be, on a certain day, appointed by law from the commencement of such election; which certain day, if any election from a district of a delegate, shall be the fifteenth; of a senator the twentieth; of a representative in congress, shall be the thirtieth; after such commencement, in the presence of two free-holders to open and examine such copies so transmitted, and compare the returns from the respective counties, and declare the person having the greatest number of votes in the whole district, duly elected in the manner and form now prescribed by law; and shall record the same in his office, and transmit a copy thereof to the person so elected, and a like copy to the clerk of the house to which such person is elected, to be preserved by him; which certified copy shall be sufficient evidence of his election and entitle him to his seat.

Duty of clerks of county court.

Contested elections.

2. In contesting elections, reference may be had by either party to the records of any county or counties from which (from any cause) such returns may not have been received or counted by the clerk giving such certificate.

When parts of counties belonging to election districts to whom such returns to be transmitted.

3. When parts of counties belong to such districts, such returns shall be transmitted by the officers conducting such elections to the clerk of the county first named in the district as aforesaid.

Duty of commissioner.

4. Within six days after the election of governor, lieutenant governor and attorney general of this commonwealth, provided for to be held on the fourth Thursday in May, one thousand eight hundred and sixty-two by an act passed January seventeenth, one thousand eight hundred and sixty-two, the commissioner superintending the election at the court house of each county or corporation in which separate elections are held, shall make out two returns as now prescribed by section fourth of chapter eighth of the code of Virginia, of one thousand eight hundred and sixty, one of said returns shall be filed in the clerk's office of the county or corporation, and the other shall be sent to the secretary of the commonwealth, under seal, ten days from the commencement of the said election to be held

To make out two returns.

Duty of sec'y of commonwealth.

on the fourth Thursday in May, one thousand eight hundred and sixty-two, and it shall be the duty of the secretary of the commonwealth immediately after receiving said returns and ascertaining what persons have been elected, to issue a proclamation declaring who have been elected, and also notify said persons, in writing, of their election.

5. All acts and parts of acts inconsistent with the provisions of this act are hereby repealed. All acts inconsistent repealed.

6. This act shall be in force from its passage. Commencement.

CHAP. 45.—An ACT requiring Clerks of Regimental Courts of Inquiry to furnish Auditor of Public Accounts a list of allowances made by their respective Regimental Courts in the year 1860.

Passed February 1, 1862.

1. Be it enacted by the General Assembly, That the clerks of all the regimental courts of inquiry of this commonwealth make out a list of all the allowances for claims made by their respective courts in the year eighteen hundred and sixty, and transmit the same to the auditor of public accounts as soon as practicable. Duties of clerks of regimental courts of inquiry.

2. It shall be the duty of the commandants of the several regiments of this commonwealth immediately to give notice to their several clerks of this duty, as well as to their duty in reference to an act passed by the general assembly on the third day of January, eighteen hundred and sixty-two, entitled "An act requiring the clerks of the several regimental courts to make out a list of the fines assessed by their courts in the year eighteen hundred and sixty, collectable in eighteen hundred and sixty-one, together with a copy of the sheriff's receipt for the same, to be transmitted to the auditor of public accounts. Duties of commandants of regiments.

3. This act shall be in force from its passage. Commencement.

CHAP. 46.—An ACT for the protection of the Cumberland Road in Ohio County.

Passed February 1, 1862.

1. Be it enacted by the General Assembly, That any person who shall kill a tree and leave it standing, within the distance of fifty feet from the road, or shall knowingly and wilfully, without lawful authority, break down, destroy or injure any bridge, sign board, milestone or post for the direction of travelers, or in any manner obstruct said road, or any ditch made for the purpose of draining such road, shall be punished by a fine of not less than five nor more than twenty dollars, at the discretion of the justice of the peace, before whom a summons or warrant may be prosecuted by the superintendent of said Liabilities of persons committing illegal acts. How punished.

road for the recovery thereof in the name of the board of public works, for the use of the fund for the maintenance and repair of said road; and the said person shall, moreover, be liable for the payment of the expense of repairing such injury, or removing such obstruction, to be recovered in like manner by summons or warrant, before any justice of the peace, if the amount shall not exceed twenty dollars, or if the amount shall exceed twenty dollars, then by the judgment of any circuit or county court, upon motion, after ten days' notice.

Duty of board of public works.

2. It shall be the duty of the board of public works to cause a survey to be made of such parts of the Cumberland Road, within the county of Ohio, as they may deem necessary, for the purpose of ascertaining what obstructions, whether by fences, buildings or otherwise, have been made or erected within the limits of said road to the injury thereof. The expense of said survey to be paid out of tolls received by said road; and the said board shall be authorized, whenever they shall deem it proper or necessary, to require the removal of any fence, building or other obstruction which may be found by said survey to be within the limits of said road upon giving to the owner thereof, or the tenant or occupier, ten days' notice of an order directing such removal, and if such order be not obeyed within the time limited by such order, the said owner, occupier or person causing such obstruction, shall be punished by a fine of not less than five nor more than twenty dollars, at the discretion of the justice of the peace before whom a summons or warrant may be prosecuted by the superintendent of said road for recovery thereof, in the name of the board of public works, for the use of the fund for the maintenance and repair of the said road, and the owner, tenant, occupier or person causing said obstruction, shall moreover be liable for the payment of the expense of removing such fence, building, or other obstruction, to be recovered in like manner by summons or warrant, before a justice of the peace, if the amount shall not exceed twenty dollars, or if the amount shall exceed twenty dollars, then by the judgment of any county court or circuit court, upon ten days' notice.

Authority of the board to remove obstructions.

Notice.

Fine.

Commencement. 3. This act shall be in force from its passage.

CHAP. 47.—An ACT authorizing the Stockholders of the Clarksburg and Buckhannon Turnpike Road to hold meetings for certain purposes.

Passed February 3, 1862.

One or more of stockholders or directors of the Clarksburg and Buckhannon Turnpike Road may notify said stockholders or directors when and where to meet.

1. Be it enacted by the General Assembly, That any one or more of the stockholders or directors of the Clarksburg and Buckhannon Turnpike Road, may notify said stockholders or directors to meet on the second Monday in February next, at the town of Clarksburg, or any subsequent day prior to the first Monday in May next, for the purpose of seeing after the finances, or tolls of said road, and all other interests of said road, and that the majority present may act.

Commencement. 2. This act shall be in force from its passage.

CHAP. 48.—An ACT authorizing Jailors to receive certain persons delivered to them by the written order of the Governor, or a military officer of the United States.

Passed February 4, 1862.

1. Be it enacted by the General Assembly, That during the existence of the war, the jailor of any county shall receive into his jail all persons sent or delivered to him by the written order of the governor, or by the written order of any military officer of the United States, without a warrant or precept of commitment, and them safely keep until discharged under the laws of the United States, or by the governor, or by the officer by whose order such persons were confined, or by an order from an officer of superior rank; and all such imprisonments heretofore so ordered are hereby declared legal. The jailor shall, for the support of any such prisoners, be paid in the manner prescribed by the thirteenth section of chapter fifty of the code of eighteen hundred and sixty.

Jailors to receive persons into their jails sent or delivered by the written order of the governor or a military officer of the United States.

How discharged.

Pay of jailor.

2. This act shall take effect from its passage, and shall expire at the close of the war.

Commencement. Expiration.

CHAP. 49.—An ACT extending the time of taking the oath of office.

Passed February 4, 1862.

1. Be it enacted by the General Assembly, That it shall be lawful in any county, city, or corporation, where elections have or may hereafter be held, that all officers elected at such elections, having failed or that may hereafter fail to take the oath of office, and give bond according to law, by reason of there being no courts at which to take such oath and give such bond, that the same may be permitted to comply with the law, by taking the oath and giving bond at the first or second organized courts of such county, city or corporation that may now or hereafter be organized.

Lawful for officers elected in counties where no court is held failing to qualify and give bond permitted to take the oath and give bond at the first or second organized court, &c.

2. This act shall be in force from its passage.

Commencement.

CHAP. 50.—An ACT entitled an Act to legalize a deed for certain lands sold for non-payment of taxes in Randolph county.

Passed February 4, 1862.

1. Whereas, John Hoy, deceased, did, in his lifetime, purchase twelve thousand acres of land, sold by the sheriff of Randolph county in eighteen hundred and forty-five, in the name of Matthew Clarkson for the non-payment of taxes; and whereas the said Hoy neglected, in his lifetime, to procure from the clerk of Randolph county, according to the statute made and provided in such cases, a deed for the same; and whereas, after his death, J. W. Crawford,

Preamble.

clerk of the county court of said county, did, on the twenty-sixth day of May, eighteen hundred and fifty-one, execute to George Smith, executor and devisee of said Hoy, deceased, a deed for the said lands. Therefore,

Deed rendered valid.

Be it enacted by the General Assembly, That the said deed is hereby rendered legal, and valid, and effectual, to pass the title therein intended to be conveyed.

Commencement.

2. This act shall take effect from its passage.

CHAP. 51.—An ACT incorporating the Wheeling Gymnastic Association.

Passed February 4, 1862.

Incorporated.

1. Be it enacted by the General Assembly of Virginia, That Henry Crangle, Joseph A. Metcalf, James M. Smith, Samuel P. Hildreth, and such other persons as may be associated with them, and their successors, are hereby created a body politic and corporate, under the name and style of "The Wheeling Gymnastic Association;" and by that name, may contract and be contracted with, sue and be sued, plead and be impleaded, in all courts and places; have a common seal, and may alter the same at pleasure, and make all necessary by-laws for the government of the said association, not inconsistent with the constitution and laws of the United States and of the state of Virginia.

Powers and authority of Association.

2. The said association shall have power and authority to appoint one or more persons to manage the business of said association, and shall have all the rights and privileges conferred, and be subject to all the restrictions, rules and regulations prescribed by the fifty-sixth and fifty-seventh chapters of the code of Virginia and by the laws amendatory, so far as they may be applicable to this charter.

Capital stock not less than $200 nor more than $2,000. Shares.

3. The capital stock of said association shall be not less than two hundred dollars, nor more than two thousand dollars, to be divided into shares of five dollars each; which may be subscribed and paid for in such manner as may be prescribed by said company in their by-laws, and said shares may be transferred in such manner as said by-laws may direct.

Powers to purchase and hold personal property necessary to carrying out the objects of the Association.

4. Said association shall have power to purchase and hold such personal property, apparatus and fixtures as they may deem necessary and proper for carrying out the lawful objects of the association.

Commencement.

5. This act shall be in force from its passage.

CHAP. 52.—An ACT authorizing the several Sheriffs and Collectors of the Commonwealth to levy, distrain or attach for the taxes due the Commonwealth for the year 1861.

Passed February 4, 1862.

1. Be it enacted by the General Assembly, That the several sheriffs and collectors of the public revenue of the state are hereby required to receive from commissioners of the revenue of any city, county or town in the commonwealth, land, property, and capitation books for the year eighteen hundred and sixty-one, reproduced in lieu of books of the same year that were lost, mislaid or destroyed, and the said sheriff or collector shall have the same power and authority to levy, distrain or attach for the taxes of eighteen hundred and sixty-one, as now given by law for the recovery of taxes due the commonwealth.

Sheriffs and collectors of public revenue required to receive from commissioners of the revenue, land, property and capitation books for the year 1861.

Power and authority of sheriff or collector.

2. This act shall be in force from and after the first day of July, eighteen hundred and sixty-two.

Commencement.

CHAP. 53.—An ACT amending and re-enacting the first section of chapter 78 of the Code of Virginia.

Passed February 4, 1862.

1. Be it enacted by the General Assembly of Virginia, That the first section of chapter seventy-eight of the code of Virginia, be amended and re-enacted, so as to read as follows: The governor, first auditor, treasurer and the secretary of the commonwealth, shall be a corporation under the name of the board of the literary fund, vested with all the powers, and are to perform the duties of said board, and shall be under all the restrictions imposed by existing laws.

Sec. 1 of chap. 78 amended and re-enacted.

Who to constitute board of literary fund.

2. This act shall be in force from its passage.

Commencement.

CHAP. 54.—An ACT to amend section 14 of chapter 37 of the code of 1860.

Passed February 4, 1862.

1. Be it enacted by the General Assembly, That section fourteen of chapter thirty-seven of the code of Virginia, be amended and re-enacted so as to read as follows:

Sec. 14 of chapter 37 amended and re-enacted.

14. What is authorized to be paid by the preceding section, may be paid within two years, to the clerk of the court of the county or corporation, (whose officer may have sold such real estate,) in any case in which the purchaser, his heirs or assigns, may refuse the same, or may not reside or cannot be found in the county or corporation; or to the auditor of public accounts, when the office of clerk of the county or corporation court is vacant.

2. This act shall take effect from its passage.

Commencement.

CHAP. 55.—An ACT to amend and re-enact the first section of chapter 25, of the Code.

Passed February 5, 1862.

Sec. 1 of chap. 25 of code of 1860 amended and re-enacted.

Be it enacted by the General Assembly of Virginia, That section one of chapter twenty-five, of the code of eighteen hundred and sixty, be amended and re-enacted so as to read as follows:

1. There shall be two musters of each company of militia of the line, annually, in April and October, to continue in each case, not more than one day, of which musters notice shall be given by advertisement in the local newspaper, if any, otherwise, to be posted at three several places in the company district, at least ten days before the muster.

Every officer and soldier shall appear at the muster ground, on the day appointed, by eleven o'clock A. M. And the commandant of each company shall, annually, in the months of October or November, report to his colonel the strength and condition of his company.

Commencement.

2. This act shall be in force from its passage.

CHAP. 56.—An ACT to amend Section 50, of chapter 52, of the Code.

Passed February 5, 1862.

Sec. 50 of chapter 52 of code of 1860 amended and re-enacted.

1. Be it enacted by the General Assembly, That section fifty, of chapter fifty-two, of the code of eighteen hundred and sixty, be amended and re-enacted so as to read as follows, viz: Any person owning land which contains coal or other minerals, in the rear of a mountain, hill or other land, desiring a subterranean or surface right of way, by railroad or otherwise, through or over such mountain, hill or other land, to convey coal or other minerals to market may apply to the court of the county or corporation in which such mountain, hill or other land may lie, for a writ in the nature of a writ *ad quod damnum*, of which application notice shall be given to the proprietors of such mountain, hill or other land, through which the subterranean or over which the surface right of way by railroad or otherwise is to be, in the manner prescribed by the second section of chapter sixty-three. If the court, on hearing the matter think it proper, it shall issue the writ accordingly, directed to the sheriff of the same county, who shall execute it in the same manner, and like proceedings shall be had thereupon as are prescribed in the third, fourth, fifth and sixth sections of said chapter sixty-three, so far as the same are applicable. If the leave prayed for be granted, the applicant shall, before he proceeds therein, pay or secure to the satisfaction of the parties entitled thereto, the compensation ascertained by the jury, and all the costs of the inquest, and shall make and keep open such subterranean or surface right of way as he is allowed to make at his own expense.

Commencement.

2. This act shall be in force from its passage.

CHAP. 57.—An ACT to amend and re-enact the 29th section of chapter 151, of the Code.

Passed February 5, 1862.

Sec. 29, chap. 151 amended and re-enacted.

1. Be it enacted by the General Assembly, That the twenty-ninth section of chapter one hundred and fifty-one, of the code, be amended and re-enacted so as to read as follows: Any creditor whose claim, whether legal or equitable, does not exceed one hundred dollars, exclusive of interest, upon complaint, on oath, in the manner prescribed by the first, second, third and eleventh sections as the case may be, may obtain from any justice of any county or corporation in which any property or effects of the defendant may be, or in which any person indebted to him may reside, an attachment against the estate of such defendant, directed to any sheriff, sergeant or constable of his county or corporation, and returnable before any justice thereof, and thereupon such proceedings may be had before the justice as would, if the claim exceeded one hundred dollars, be had before a court, except that the proceedings shall be in all cases without any formal pleadings, and the justice shall try and decide all questions without a jury. But in every case where the sum or thing in controversy exceeds the amount of value of twenty dollars, the justice shall upon application of the defendant, at any time before the trial, remove the cause to the court of the county or corporation wherein the same shall be brought, and the clerk of the said court shall docket the same, and it shall be proceeded in as if it were a motion in said court, under the sixth section of chapter one hundred and sixty-seven, of which the notice was docketed at the time such case is so docketed.

2. This act shall be in force from its passage. Commencement.

CHAP. 58.—An ACT to amend and re-enact the 2d Section of Chapter 150 of the Code.

Passed February 5, 1862.

Sec. 2, chap. 150 amended and re-enacted.

1. Be it enacted by the General Assembly, That the second section of chapter one hundred and fifty, of the code, be amended and re-enacted, so as to read as follows: A justice, when applied to by any person, shall issue a warrant to a constable, requiring him to summon the person, against whom the claim is made, to appear before him or some other justice, on a certain day, not exceeding thirty days from the date thereof, to answer such claim. It shall be made returnable to some place within the constable's district in which the defendant resides, or in which the cause of action arose, unless the justice, for good cause, shown on oath, direct it to be returned to some other place within his county or corporation.

2. This act shall be in force from its passage. Commencement.

CHAP. 59.—An ACT to repeal an Act entitled "An Act to authorize the Trustees of Brooke Academy to transfer their property to the Meade Collegiate Institute, and to authorize the said Institute to re-transfer the same property to the Trustees hereinafter appointed.

Passed February 6, 1862.

The Act entitled 'An Act to authorize the trustees of Brooke Academy to transfer their property to the Meade Collegiate Institute, passed May 4, 1852, repealed.

1. Be it enacted by the General Assembly, That the Act entitled, an Act to authorize the trustees of Brooke Academy to transfer their property to the Meade Collegiate Institute, passed on the fourth day of May, eighteen hundred and fifty-two, be and the same is hereby repealed; and the corporation of Brooke Academy is hereby revived and re-established under the name and style of "Brooke Academy," with all the rights, powers, privileges and immunities of a corporation, under and according to the laws of Virginia, and with all the rights, powers, privileges and immunities of said Brooke Academy before the act hereinbefore repealed was passed, and subject to the same limitations as are therein specified.

Corporation of Brooke Academy

Trustees Brooke Academy appointed.

2. That Hugh W. Crothers, Danforth Brown, sen., David Fleming, Obadiah W. Langfitt and Samuel George be, and they are hereby appointed and made trustees of Brooke Academy with power in any three to act and to fill all vacancies occurring in their own body. And the said trustees are hereby authorized to take possession of all real estate formerly belonging to said Brooke Academy, whenever the same shall have been conveyed to them as hereinafter provided for, and to collect and receive all monies due, or in anywise belonging to, or held in the name of Brooke Academy, and apply the same to the best advantage for an Academy of Education, within the intent and meaning of its former charter. And they are hereby authorized to purchase other real estate for the purpose of enlarging said academy and of adding thereto a female seminary, whether such real estate adjoins the aforesaid real estate or not, and to this end may accept donations in land, money, or other property.

Their power and authority.

Sobieski Brady to convey title by deed.

3. That Sobieski Brady, for and on behalf of said Meade Collegiate Institute, and as the president thereof convey by deed, to the trustees aforesaid, the title to the real estate heretofore conveyed by Danforth Brown, sen., president of Brooke Academy, to said Institute, by deed bearing date on the first day of March, eighteen hundred and fifty-three.

Commencement.

4. This act shall be in force from and after its passage.

CHAP. 60.—An ACT changing the place of holding an election in the countyof Braxton.

Passed February 6, 1862

Place of election discontinued and new one appointed.

1. Be it enacted by the General Assembly, That the separate election heretofore authorized to be holden at the Motes House, in the fourth magisterial district of the county of Braxton, shall be and the

same is hereby discontinued, and in lieu thereof, the usual election for said fourth district shall be holden at the house of Daniel Friends on Steer Creek, at which election precinct, all persons qualified by law to vote, in said district may vote.

2. This act shall be in force from its passage. Commencement.

CHAP. 61.—An ACT to provide for the payment of costs in prosecutions for misdemeanors, etc.

Passed February 15, 1862.

1. Be it enacted by the General Assembly, That the expenses incurred in prosecutions for misdemeanors shall be chargeable to the commonwealth.

Expenses in prosecutions for misdemeanors chargeable to the Commonwealth.

2. This act shall be in force from its passage. Commencement.

CHAP. 62.—An ACT to re-organize the Kanawha Board.

Passed February 8, 1862.

1. Be it enacted by the General Assembly, That until the individuals holding stock in the Kanawha River improvement shall hold a meeting within the jurisdiction of this assembly for the election of directors, the board of public works shall annually appoint five directors for the Kanawha board, with power to sue and be sued, as a body politic and corporate, who shall have control and supervision of the Kanawha River and Road, according to the provisions of the act providing more effectual means for the improvement of the Kanawha river, passed February fifteenth, eighteen hundred and fifty-eight, and an act to amend the charter of the James River and Kanawha company, passed March twenty-third, eighteen hundred and sixty, so far as the same may be consistent with the provisions of this act. The said board of directors shall hold their offices for one year, and until their successors are appointed, and shall have all the powers pertaining to the said board, as fully as if they had been appointed according to the provisions of the said act, passed February fifteenth, eighteen hundred and fifty-eight.

Board of Public Works annually to appoint five directors for the Kanawha board, until individuals holding stock hold a meeting within the jurisdiction of this Assembly for the election of directors.

Term of office.

2. The said Kanawha Board is hereby authorized and required to prosecute the improvement of the Kanawha river by contract, according to the provisions of the aforesaid act, passed March twenty-third, eighteen hundred and sixty; or by appropriating the surplus tolls accruing on the river and road, as they may deem most expedient; and to this end shall proceed to collect all arrears of tolls or other dues; Provided, that nothing in this act shall be so construed as to authorize the new board to make any contracts binding on the commonwealth for the payment of money, or the issuing of bonds to supply any deficiency, not heretofore issued under the provisions of the aforesaid act passed March twenty-third, eighteen hundred and sixty.

Duties of Kanawha Board.

Extent of authority.

3. And the said Kanawha board shall also have full control over the Kanawha road, and shall appoint a general superintendent, who shall have supervision of both the Kanawha river and Kanawha road, whose duty it shall be to collect from the gate keepers quarterly, the net proceeds of the tolls collected by said gate keepers, and keep such road in repair by the use of said tolls, and pay over the residue to the said board for the river improvement; also to take charge of and secure for the use of the said board all the boats, tools and other property now on the river, which was procured by the late Kanawha board, in and for the improvement of the Kanawha river and road, and manage and superintend the improvement of the river, subject to the control of said board, and shall make quarterly returns to said board of his collections and disbursement, and shall receive for his services, annually, a sum not exceeding twelve hundred dollars.

To account and pay over quarterly.

4. The said collectors shall account quarterly to the board, and pay over to them all the monies collected by them.

Annual report.

5. The said board shall annually make full report to the board of public works of all their acts and doings.

Laws in conflict with this act repealed.

6. All former laws in conflict with the provisions of this act are hereby repealed.

Commencement.

7. This act shall be in force from its passage.

CHAP. 63.—An act to incorporate the Accomac and Northampton Air Line Rail Road Company.

Passed February 8, 1862.

When and where books of subscriptions may be opened and under whose direction.

1. Be it enacted by the General Assembly, That it shall be lawful to open books at Drummondtown, in the county of Accomac, and Eastville, in the county of Northampton, upon ten days notice, under the direction of Sewell Horsey, Arthur Watson, Frederick Floyd, George Rogers, Arthur Downing, Leonard B. Nottingham, Peter Bowdin, or any three of them, at such time or times as they may deem proper, and in such other place or places, and under the direction of such agents, as the commissioners acting may appoint, for the purpose of receiving subscriptions, to the amount of six hundred thousand dollars divided into shares of fifty dollars each, to constitute a joint capital stock, for the purpose of constructing a railroad from Cherrystone Ferry, in Northampton county, to the Maryland line, in the direction of Salisbury, Maryland.

Amount of subscription $600,000

Shares.

When 1000 shares are subscribed, the said company incorporated.

Style of company

2. Whenever one thousand shares of the stock shall have been subscribed, the subscribers and their successors shall be and they are hereby incorporated into a company, by the name of "The Accomac and Northampton Air-Line Rail Road Company," subject to all the provisions, and entitled to all the benefits and powers conferred by the provisions of chapters fifty-six and fifty-seven of the code of Virginia, so far as the same may be applicable and not inconsistent with the provisions of this charter.

3. The said company shall have power to borrow money to the amount of five hundred thousand dollars, and to lease their road to any person or persons, domestic or foreign corporations, any of which shall have power to subscribe to the stock of said company, and to lease and operate the aforesaid road, subject to the provisions of chapters fifty-six and fifty-seven of the code of Virginia, and this act. Powers of said company to borrow money, &c:

4. This act shall be in force from its passage. Commencement.

CHAP. 64.—An ACT declaring certain persons non-residents, and providing for proceedings against them as such.

Passed February 10, 1862.

1. Be it enacted by the General Assembly of Virginia, That any person or persons, who shall have voluntarily left, or who shall hereafter voluntarily leave his or their usual place or places of abode, and who shall have gone, or who shall hereafter go, into the armies of the so-called Confederate States, shall be deemed non-residents, and may be proceeded against by attachment or otherwise, as is now provided for by law against non-residents. Who shall be deemed non-residents.

2. Be it further enacted, That any person or persons reputed to be in sympathy with the southern rebellion, or with the so-called Confederate States, who shall have voluntarily left, or who shall hereafter voluntarily leave, his or their usual places of abode, and who shall have gone, or who shall hereafter go, out of the reach of personal service of civil process issuing from the county in which such person or persons last resided, and who shall so remain for ninety days after having left such usual place of abode, shall be deemed non-residents, and may be proceeded against by attachment or otherwise, as is now provided for by law against non-residents. Persons reported to be in sympathy with the Southern rebellion, or with the so-called confederate States, when to be deemed non-residents.

3. Be it further enacted, That in proceedings under this act, the affidavit required may be in the form now provided by law in attachments against non-residents. Form of affidavit.

4. This act shall be in force from its passage. Commencement.

CHAP. 65.—An ACT to amend and re-enact the Act passed July 26th, 1861, entitled, "An Act staying the collection of certain debts."

Passed February 8, 1862.

Be it enacted by the General Assembly of Virginia, That the Act passed July twenty-sixth, eighteen hundred and sixty-one, entitled "An Act staying the collection of certain debts," be amended and re-enacted so as to read as follows: Amended and re-enacted.

1. Be it enacted by the General Assembly of Virginia, That no writ of *fieri facias*, distress warrant, order, or other process, shall

No writ of fieri facias, distress warrant order or other process to issue under any judgment or decree heretofore rendered by any court of this Commonwealth or justice of the peace, nor under any decree heretofore rendered by any such court or justice. No sale to be had under any deed of trust heretofore executed without the consent of all the parties thereto.

issue under any judgment or decree heretofore rendered by any court of record of this Commonwealth, or justice of the peace, nor upon any judgment, nor under any decree that may hereafter be rendered by any such court or justice, while this act shall remain in force, nor shall there be any sale under any deed of trust heretofore executed, without the consent of all the parties thereto, nor under any decree or judgment now rendered or that may hereafter be rendered, until otherwise provided for by law. And in any case where a levy has been made prior to the passage of this act, the property so levied upon shall be returned to the owner, and the judgment upon which the levy was made, shall be a lien upon all the property, both personal and real, of the debtor, and shall have priority over all other judgments against the personal property of such debtor. But an execution shall, at the instance of the plaintiff or his agent, be issued, and proceedings had thereunder, as if this act had never been passed, in any case where an affidavit has been filed with the clerk or justice, as the case may be, that the affiant believes that the defendant in such case is removing, or intends to remove his effects out of the county where the judgment was rendered.

Levy.

Property to be returned to owner.

Lien.

2. Be it further enacted, That any person may sue for any debt, and maintain any action at law or in equity, and proceed to judgment therein, and any judgment, execution, order or decree now issued or rendered, or that may hereafter be rendered, shall, in addition to the provisions of chapters one hundred and eighty-six and one hundred and eighty-eight, of the code of eighteen hundred and sixty, constitute a lien on all the estate, both personal and real, of the judgment debtor from and after the docketing of any such judgment, as provided for in the third and fourth sections of chapter one hundred and eighty-six of the code of Virginia. This provision shall include all judgments, whether rendered by justices of the peace or courts of this Commonwealth.

Lien on real and personal estate.

What is included.

3. Be it further enacted, That nothing herein contained shall be construed so as to interfere with or abridge the laws now in force in relation to attachments and actions of detinue and trover, nor in relation to actions of ejectment and unlawful entry and detainer, nor in relation to the prosecution of criminal offences and the collection of fines, taxes, licenses, county levies, and all debts due the Commonwealth; but the same may be proceeded in as now provided for by law; nor shall this act apply to liabilities on the part of sheriffs, constables, or other public officers, either to the State, counties, corporations, or individuals; nor to debts contracted after the twenty-sixth day of July, eighteen hundred and sixty-one; nor to deeds of trust executed after the said twenty-sixth day of July, eighteen hundred and sixty-one; but payments of and sales under the same may be enforced and proceeded in as if this act had not been passed; nor shall the time during which this act is in force be computed in any case in which the statute of limitation may come in question.

Exceptions.

4. This act shall be in force from its passage, but shall expire on the first day of January, eighteen hundred and sixty-three.

Expiration.

CHAP. 66.—An ACT to amend and re-enact the Act passed January 6th, 1854, entitled "An Act providing for opening and keeping in repair the County Roads in the county of Marshall.

Passed February 10, 1862.

Be it enacted by the General Assembly of Virginia, That the act passed January sixth, eighteen hundred and fifty-four, entitled "An Act providing for opening and keeping in repair the county roads in the county of Marshall," be amended and re-enacted so as to read as follows:

An act providing for opening and keeping in repair the county roads in the county of Marshall, passed January 6, 1854, amended and re-enacted.

1. Be it enacted by the General Assembly, That at its first term for making the county levy, after the ratification of this act, as herein provided, the county court of Marshall county shall divide the said county into convenient road precincts, or may adopt, change, or alter the precincts now established, as it may deem best calculated to secure the opening and keeping in repair the county roads in said county; each of which precincts shall continue a precinct until, in like manner, a change thereof shall be made by said court.

County court to divide the county into road precincts, or may adopt, change or alter precincts now established.

2. The court shall appoint, in each precinct, when, from any cause, a vacancy exists, a surveyor, whose term of office, as well as those already appointed or elected, shall expire on the third Monday in September next; and shall place under each surveyor all the county roads in their respective precincts, except such as are intended to be kept in repair by tolls to be collected therefrom.

When vacancy exists court to appoint a surveyor.

When term of office expires.

To have control of county roads in his precinct.

Exception.

3. That the male tithables, twenty-one years of age, resident in the several precincts, shall, on the first Saturday in September next, and on the same day every two years thereafter, from among themselves, elect a surveyor of roads for their respective precincts; the said election to be held in the most central, convenient and public place in the precinct, under the superintendence of such person as may be surveyor of roads in the precinct at the time, but if there be none, then under the superintendence of any justice of the peace residing therein; and if no justice of the peace resides therein, then under the superintendence of any justice of the peace, whose district such precinct forms a part; of which election, the said surveyor or justice of the peace as the case may be, shall cause at least ten days previous notice to be given, by advertisement, at two or more of the most public places in said precinct, and shall certify the result of said election to the next county court, giving the name of the person elected; and if from any cause no such election be made, to certify the fact, in which case the county court shall immediately appoint a surveyor for such precinct, for the succeeding two years. Each surveyor so elected or appointed, shall continue in office from the first day of September, of the county court of said county, next after the day for holding such election, until the first day of the September term of said court two years thereafter, unless by death or removal from the precinct, his office shall be vacated; in which case it shall be the duty of a justice of the peace in the precinct, if any therein, and if none, of a

Titheables elect a surveyor every two years.

Election, where held.

Under whose superintendence.

Ten day's notice to be given.

Result of election to be certified to county court.

In case of death how the office is to be filled.

justice of the peace whose district such precinct forms a part, as soon as practicable to hold an election to fill such vacancy, first giving notice of the time and place of said election, in the manner aforesaid; and if any person so elected or appointed surveyor of any precinct, shall refuse to serve, he shall forfeit ten dollars, to be expended on the roads in his precinct, recoverable by suit, in the name of the county, for the use of the said precinct, before any justice of the peace in said county: Provided, however, that no person shall be required to serve as surveyor of any road two consecutive terms.

Any person appointed or elected surveyor refusing to serve to forfeit $10.

How recoverable

Proviso.

Who to work on the roads.

4. Each male titheable, between twenty-one and sixty years of age, shall work on the roads two days in every year in the precinct in which he resides (and in no other,) when called on by the surveyor, after having at least two days notice of the time and place of performing such labor, and every person so required to work under the surveyor so placed over him, who shall fail to attend, with proper tools for opening and clearing the road, or who shall refuse to work when there, as a hand should do, or furnish some other male person, equally able to work, in his stead, shall pay at the rate of seventy-five cents per day (or such sum as the said county court may hereafter fix upon) for each day or part of day's failure; and in case of a slave, the fine shall be paid by his master. The said sum shall be paid to the surveyor for the use of his precinct, and if not paid when called for by said surveyor, may be recovered by him, before any justice of the peace by suit, in the name of the county for the use of the precinct.

Failure to attend on part of person having notice, he is to pay at rate of 75 cts. a day.

How recoverable

If the labor in any one year be insufficient for any precinct to make and keep the public roads thereof in repair a justice of the peace and surveyor may levy a road tax for such precinct.

5. If the labor of the tithables, as aforesaid, shall not, in any one year, be sufficient in any precinct to make and keep the public roads thereof in good repair, a justice of the peace, in whose district such precinct may lie, and the surveyor of the precinct, together, being first duly sworn for that purpose, before some justice of the peace for said county, may levy, as a road tax for such precinct, on all taxable property in said precinct, any sum not exceeding seventy-five per cent on the amount for that year imposed thereon for state revenue, one-sixth of which shall be paid in money, and the remainder in labor on the roads, or in money, at the option of the person on whom such levy shall be imposed, which road levy, the said justice of the peace and the surveyor shall report to the next county court of said county, and their report shall be filed in the clerk's office of said court. And if said property-holders, or any of them, shall desire to pay their tax in labor, as aforesaid, they shall work on the roads themselves, or by such able-bodied men as they may send, when thereto required by the surveyor, after having, if a resident of the precinct, at least two days' notice given to him or herself, or some member of his or her family, over sixteen years of age, of the time and place of performing such labor; and if not a resident of the precinct, at least five days' notice to his or her agent or tenant, if any in the precinct; and if no such agent or tenant be found in the precinct, no further notice shall be required. The surveyor himself shall, in all such cases, be a competent witness to prove the service

How paid.

To report to county court.

To what notice residents are entitled.

Non-residents entitled to what notice.

The surveyor a competent witness.

of such notices. All such property holders shall be allowed by the surveyor for such labor on the roads, at the rate of seventy-five cents a day, or such sum as the court may hereafter fix upon, as required of the titheables, as aforesaid. Each surveyor shall collect all money payable as aforesaid, and all the delinquencies, forfeitures or fines, accruing under this act, in his precinct, and if necessary, may sue for the same as aforesaid before any justice of the peace or court for said county as the jurisdiction may require, in the name of the county, for the use of the precinct, or may attach the property, money or effects of any non-resident who may fail to pay any such taxes in the same manner that other debts are collected from non-residents or absconding debtors in the name of the county, for the use of the precinct. Every such surveyor shall be charged, in his annual settlement of accounts, with the full amount of fines and road levy of his precinct, and the amount, if any, due from his predecessor, unless he shows, under oath, delinquents from whom such tax, fines or money in the hands of his predecessor could not be collected; and shall at the expiration of his term pay over to his successor all money in his hands. All money and labor that shall become due under the provisions of this act shall be applied to the use of the roads in the precinct in which the same may become due, and the expenses incident thereto; provided that all persons and property in incorporated towns, the charters of which exempt the inhabitants thereof from working on the public roads, shall be exempt from the provisions of this act.

At what rate property holders are allowed for labor on the roads.

Surveyor to collect.

May sue for same.

What the surveyor shall be charged with in his annual settlement.

How money and labor due under this act is to be applied.

Proviso.

6. Each surveyor, before entering on the duties of his office, shall himself, with one or more good securities, execute and deliver to the county court, a bond payable to the justices then sitting, in a penalty of two hundred dollars, conditioned for the faithful performance of the duties of his office, for the regular and full settlement of his accounts, annually with said court, and the payment to his successor of any monies which he may have in his hands belonging to his precinct, or which may be due from him thereto. And if any surveyor shall fail to pay over to his successor any such monies in his hands, his successor shall institute a suit upon his said bond in the name of said justices for the use of the precinct, and recover from him and his sureties, such sum as may appear to be due, with interest, damages and costs.

Surveyor to give bond with security.

Condition of bond.

7. Each surveyor shall annually settle his accounts, verified by oath, before a justice of the peace of whose district his precinct forms a part, under a penalty of one hundred dollars, recoverable by action on his bond aforesaid, and shall return his settlement so made to the next county court to be filed in the clerk's office of said county, and if such settlement shall not be returned within one year from the time he is qualified, or within one year from the return of his last settlement, then the penalty aforesaid shall be deemed and taken to have accrued, and if the justice of the peace shall fail to attend to such settlement when thereto required by said surveyor, he shall for-

Surveyor to make annual settlement.

Settlement to be returned to county court and filed in clerk's office.

feit ten dollars, to be collected as aforesaid; and in case of such failure said surveyor may apply to the county court, before which he shall settle and report his settlement so made.

Duties of surveyor.

8. Every surveyor of a road shall cause the same to be constantly kept well drained, cleared and smoothed; and thirty feet wide, at the least, unless the court shall by order of record authorize a less width, unless on steep hillsides when they shall be at least twelve feet wide; and at the forks or crossings of any great leading public road, shall cause to be erected and kept in repair from time to time, an index on a post or tree, with plain inscriptions thereon, in large letters, directing to the most noted place to which each of said roads shall lead; and when small bridges and causeways are necessary, the said surveyor shall cause them to be made twelve feet broad at least, convenient and safe, and shall keep the same in repair; and for that purpose may cut and take from the adjoining lands of any person such and so much timber, earth or stone as may be necessary, the same being first valued, on oath, by two honest freeholders appointed for that purpose by a justice of the peace (unless the owner shall freely give such timber, earth or stone for that purpose.) The value of such timber, earth or stone assessed as aforesaid, to be paid by the surveyor, out of the road funds of his precinct. And in like manner, any damage which shall accrue by cutting ditches or making dams shall be assessed and paid for. And every such surveyor shall have his road in good repair against the first day of the September term of the county court of said county, in each and every year.

Surveyors may pay out of road funds in their hands all necessary laborers, &c.

9. Each surveyor of roads may employ and pay for out of the road funds in his hands, all necessary laborers, teams and implements, to aid in making and repairing the roads in his precinct, at the current prices for such labor in the neighborhood, at the time, or such prices as the court may hereafter agree upon, and for all the time which he may properly devote to his duties as surveyor of the roads, he shall be allowed a credit on his annual account at the rate of seventy five cents per day for his services, or such sum as the court may hereafter agree upon. But the whole amount of credits thus allowed to any one surveyor shall not exceed the sum of twenty dollars in any one year.

Surveyor liable to presentment and fines.

10. The said surveyor of roads shall be liable to presentment and fine, (as is now prescribed by law, by the county or circuit court of the county, for failing to keep his roads in repair, as by this act required; provided, that at the time of so failing to keep his roads in repair, he shall not have expended the monies and labor of his precinct.

Application for opening, altering or discontinuing any road or landing, &c.

11. Upon any application for opening, altering or discontinuing any road or landing, or for building any bridge or causeway, the proceedings shall be the same as are prescribed by the fifty-second chapter of the code of Virginia, so far as the same are consistent with the provisions of this act.

12. This act shall be in force from and after the time of obtaining the assent of the qualified voters of Marshall county, not residing in any incorporated town, the charter of which exempts the inhabitants thereof from working on the public roads, and for the purpose of ascertaining the sense of said voters as to the acceptance or rejection of this act, it shall be the duty of the several officers conducting the election, to be held in the county of Marshall on the fourth Thursday in May next, to cause poll books to be opened at the several places of voting in said county, in which shall be two columns, headed respectively—"For the amendment to the road laws," and "Against the amendment to the road laws;" and it shall be the duty of said officers to take the votes of the persons voting on said question, and cause them to be recorded as they may be given, in one or the other of said columns, and the said officers shall certify to and return the result of said election to the next county court of said county, to be entered on the minutes of said court, and if such returns show that a majority of the votes cast on said question be in favor of the amendment to the road laws, this act shall be in full force.

When this act takes effect.

Duties of officers conducting the election.

How polls are to be headed.

Result of election to be certified and returned to the county court.

13. The county court may, once in every two years, (a majority of the justices being present or all having been summoned for the purpose,) change the amount of wages, of surveyors, fines for failing to work on roads, and the amount allowed to hands (not to exceed one dollar a day for either,) and teams for working thereon.

Power of county court to change the wages of the surveyor, fines, &c.

14. All taxes, levies and fines that have heretofore been assessed, levied and imposed, or which may hereafter, before the ratification of this act, be assessed, levied and imposed, shall be collected and paid for the use of the roads in the precincts for which the same was or hereafter may be so levied, assessed and imposed, in the same manner as if this act had not been passed.

Taxes, levies and fines heretofore laid or imposed how to be disposed of.

15. This act shall be in force from its passage.

Commencement.

CHAP. 67.—An ACT declaring the Ohio River and its banks a lawful fence in the Counties of Mason and Brooke.

Passed February 10, 1862.

1. Be it enacted by the General Assembly, That the Ohio river and its banks be and is hereby declared a lawful fence in the counties of Mason and Brooke, excepting always such parts of the banks thereof as shall be used for highways.

The Ohio river and its banks declared a lawful fence in counties Mason and Brooke. Exceptions.

2. This act shall be in force from its passage.

Commencement.

CHAP. 68.—An ACT to provide a Military Fund.

Passed February 10, 1862.

Governor directed to receive and place in the state treasury all monies due the state for expenses for military purposes paid by the state heretofore, or that may be paid hereafter.

1. Be it enacted by the General Assembly, That the governor be and is hereby directed to receive from the United States government, and place in the state treasury all money due the state for expenses, for military purposes, paid by the state heretofore, or that may be paid hereafter.

What constitutes the military fund.

2. The money thus received, and the sum of forty thousand dollars, which is hereby appropriated out of any money in the treasury not otherwise appropriated, shall constitute a fund to be called the "Military Fund," and be used to defray the expense of organizing, arming, transporting and supporting the military forces of this state, now or hereafter to be called into the service in aid of the government of this state, or of the United States, and all incidental expenses connected therewith.

How to be used.

Duty of governor

3. The governor shall examine all the claims presented upon said fund, and may require them to be verified by affidavit or otherwise, and the auditor of public accounts is hereby directed to issue his warrant in favor of such claims as the governor may certify to be correct.

The act making an appropriation for military purposes, passed July 26, 1861, repealed.

4. Be it further enacted, That the act entitled "An Act making an appropriation for military purposes," passed July twenty-sixth, eighteen hundred and sixty-one, be, and the same is hereby repealed.

Commencement.

5. This act shall be in force from its passage.

CHAP. 69.—An ACT repealing the 2d, 3d, 4th, 5th, 6th, 7th, 9th and 11th sections of Chapter 25 of the Code.

Passed February 10, 1862.

Sections 2, 3, 4, 5, 6, 7, 9 and 11 of chapter 25 of the code, repealed.

1. Be it enacted by the General Assembly of Virginia, That the second, third, fourth, fifth, sixth, seventh, ninth and eleventh sections of chapter twenty-five of the code, be and the same are hereby repealed.

Commencement.

2. This act shall be in force from its passage.

CHAP. 70.—An ACT prescribing oaths in certain cases, and providing for the registration of the same.

Passed February 10, 1862.

Duties of courts and commissioners of the revenue.

1. Be it enacted by the General Assembly, That the courts and commissioners of the revenue of the counties in which officers have been elected, or in which courts of justice have been organized, or in which they may hereafter be organized, or in counties where commissioners of the revenue may be hereafter elected, or in which courts of justice shall be organized under an ordinance passed by the con-

vention which assembled at Wheeling, on the eleventh day of June, eighteen hundred and sixty-one, entitled "An Ordinance for the reorganization of the State Government," shall, before granting a license to practice any profession, or to conduct any business or calling for which a license is now required by existing laws, require every such applicant, who cannot furnish satisfactory evidence of his having previously taken and subscribed the oath aforesaid, and that the same is on file in the proper office as hereinafter provided for, to take and subscribe the same. And if such applicant shall refuse to take and subscribe such oath, the court or commissioner to whom such application has been made, shall refuse to grant such license.

Who required to take the oath.

Persons refusing to take and subscribe oath not to receive license.

2. Every attorney at law who is not a resident of this state, but who is a resident of the District of Columbia, or any state or territory of the United States, who shall produce before the court in which he proposes to practice, satisfactory evidence that he has been duly licensed to practice his profession in the said District of Columbia, state or territory, according to the laws thereof, shall take before the court in which he proposes to practice, an oath to support the constitution of the United States, that he will honestly demean himself in the practice of the law, and that he will perform the duties of his office of attorney at law to the best of his ability. But before any attorney, who is a resident of this state, shall be permitted, after the taking effect of this act, to practice his profession in any county of this commonwealth, in which courts of justice have been organized, or in which courts may hereafter be organized under the ordinance aforesaid, he shall, in addition to the oath last mentioned, be required to take and subscribe the oath prescribed for officers by the ordinance aforesaid. Any attorney who shall practice in any such court of the commonwealth, without complying with the provisions of this section, shall be subject to all the fines and penalties mentioned in the tenth section of chapter thirty-eight of the code of eighteen hundred and sixty. No person shall, without taking and subscribing the oath aforesaid, act as agent of any mining or manufacturing company, or association, whether incorporated or not, or as the agent of any coal or timber company, whether foreign or domestic, having a depot in this state, or as clerk or agent for any person required to take and subscribe the oath aforesaid. Any person violating the provisions of this section shall be guilty of a misdemeanor, and subject to a fine of not less than ten nor more than five hundred dollars.

Non-resident attorneys.

Resident attorneys.

Any attorney practicing without complying with the provisions of this section to be subject to all the fines and penalties mentioned in section 10 of chapter 38 of the code of 1860.

Agents.

Misdemeanor.

Fine.

3. It shall be the duty of ministers of the Gospel and all other persons authorized, under existing laws, to solemnize the rites of matrimony, resident in any county in which courts of justice have been organized, or in which they may be hereafter organized under the ordinance aforesaid, to go, within sixty days after the passage of this act, and within sixty days after the organization of such courts in any county in which the same may be hereafter organized, to take and subscribe the oath aforesaid, and it shall be the duty of the courts

Ministers of the Gospel.

Any one violating this section to be fined not less than $10 nor more than $500.

Proviso.

in all such counties to require every applicant for a license to solemnize the rites of matrimony, to require such applicant to take and subscribe the oath aforesaid, and upon a refusal so to do, the court shall refuse the application. Any person who shall solemnize the rites of matrimony in violation of this section, shall, at the discretion of a jury, be fined not less than ten nor more than five hundred dollars: Provided, however, that no marriage shall be deemed void which was solemnized in violation of this section.

Physicians, surgeons and dentists.

Any one violating this section to be fined not less than $20 nor more than $100 for each offense.

Non-resident physicians, &c., complying with existing laws and taking an oath to support the constitution of the United States may practice his or her profession in this state.

4. It shall be the duty of all physicians, surgeons or dentists, who shall hereafter obtain a license under existing laws, to practice their profession, and resident in any such county mentioned in the preceding sections, to take and subscribe the oath aforesaid. And if any physician, surgeon or dentist shall practice his or her profession in any such county, in violation of this section, he or she shall pay a fine of not less than twenty nor more than one hundred dollars for each offense; and shall not maintain any action in any court or before any justice of any such county for services rendered while practicing without license in any such profession. But nothing in this section shall be so construed as to prevent any physician, surgeon or dentist resident in any other state or district, who shall comply with existing laws, and will take an oath to support the constitution of the United States, from practicing his or her profession in this state.

Bank directors, officers of banks, and keepers of toll bridges, &c., and officers and clerks of corporations, associations and institutions, councilmen, deputy clerks of county, corporation and circuit courts, commissioners in chancery, notaries public, within sixty days after the passage of this act, to take the oath.

Any one continuing in office in violation of this act, to be fined not exceeding $2,000

Grand jurors, petit jurors, veniremen and special jurors.

5. It shall be the duty of all bank directors and all officers of banks, and the keepers of all toll bridges, roads or ferries, and officers and clerks of all corporations, associations and institutions, in which the state has an interest, and councilmen, and also of all deputy clerks of county, corporation, and circuit courts, commissioners in chancery for such courts, and notaries public in such counties as aforesaid, within sixty days after the taking effect of this act, to take and subscribe in manner and form aforesaid the oath aforesaid. Any one continuing in office in violation of this act shall be fined not exceeding two thousand dollars.

It shall be the duty of the courts in all counties in which courts of justice have been organized, or in which the same may be hereafter organized as aforesaid, to require all grand and petit jurors, veniremen and special jurors to take the said oath.

Duties of clerks of courts.

6. It shall be the duties of the clerks of all counties in which courts of justice have been organized as aforesaid, or in which they may be hereafter organized, to have prepared at the expense of their respective counties, printed copies of the oath aforesaid, to be kept by them for the use of the commissioners of the revenue, and all other persons authorized to administer the oath aforesaid in their respective counties. And it shall be the duty of all such clerks, and all other persons authorized to administer the oath aforesaid, upon the application of any person for a license or other purpose requiring the taking of an oath, to require such person, after taking the oath aforesaid, to subscribe his or her name, in his or her own handwrit-

ing; and if such person cannot write, then by his or her mark, attested by one witness, and the name of the person administering such oath, to one of said printed copies of said oath, and the clerk or other person administering said oath shall require the party subscribing to give his or her age, residence and occupation, which shall be inserted by the person administering said oath, on the back of the said printed copy, in a plain, legible manner.

And the said printed copies, when subscribed before any person other than the clerk of any such county, shall be transmitted to the clerk of the county in which the individual so subscribing may reside, within fifteen days after so subscribing, to be filed by said clerk, together with all such copies as may be subscribed before him, or any court in such county, in the office of such county clerk. And it shall be the duty of the clerks aforesaid to enter in a book, to be prepared and kept in the office of any such clerk, the name, residence, age and occupation of any person having so subscribed, together with the date of such subscribing, and the court, commissioners of the revenue, or other person, before whom such oath may have been subscribed. And in any court in which the question of the taking and the subscription of such oath may arise, a certificate attested by the clerk of any such court, in the manner prescribed by existing laws, for the attestation of public records, of such printed copy or register being on file in his office, shall be evidence of the taking and subscribing of the said oath. Any clerk or other person failing to comply with the provisions of this section, shall be subject to a fine of not less than twenty nor more than five hundred dollars.

Certificate, when evidence.

Fine.

7. If any person shall go voluntarily before a military officer, court, or any person authorized to administer an oath, and shall take and subscribe the oath aforesaid, or if any person under arrest, whether by the military or civil authorities, shall take an oath to support the constitution of the United States, or shall take and subscribe the oath prescribed by the convention aforesaid, with the view of effecting his or her release, and at any time thereafter violate the said oath, shall be deemed guilty of a misdemeanor, and shall, at the discretion of a jury, be fined not less than twenty, nor more than one thousand dollars, and be confined in the county jail not exceeding twelve months, and shall, moreover, be subject to all the penalties mentioned in the third section of chapter one hundred and ninety-four of the code of eighteen hundred and sixty.

Persons voluntarily taking oath and subsequently violating the same, to be deemed guilty of a misdemeanor.

Fine.

8. This act shall be in force from its passage, and until the end of the present war, and no longer.

Commencement.
Expiration.

CHAP. 71.—An ACT appointing Commissioners to locate the county seat of McDowell.

Passed February 11, 1862.

1. Be it enacted by the General Assembly of Virginia, That Charles Stuart, Andrew Workman, Robert Hager, George Claypole and Wil-

Commissioners.

liam A. Cook be, and they are hereby appointed commissioners for the purpose of locating the county seat of McDowell; whose duty it shall be to assemble on the twenty-second of April, eighteen hundred and sixty-two, (or as soon thereafter as the state of the country will admit, to be agreed upon by said commissioners,) in said county. A majority of said commissioners shall be entitled to act. They shall proceed to examine the several places proposed for the county seat of the said county of McDowell, and after hearing any evidence that may be offered on the subject and considering the conveniences of the people of McDowell, with all the circumstances connected therewith, they shall report to the county court of McDowell county, where, in their opinion, the county seat of McDowell should be; and such place so designated, shall be the permanent county seat of McDowell, at which place the public buildings shall be erected.

A majority may act.

To report to the county court.

Compensation.

2. The said commissioners shall be entitled to receive two dollars per day for their services for such time as they are necessarily employed in such service, to be paid out of the county levy of McDowell county.

Commencement.

3. This act shall be in force from its passage.

CHAP. 72.—An ACT to incorporate the Charleston and Winchester Rail Road Company.

Passed February 13, 1862.

Where books of subscription may be opened.

1. Be it enacted by the General Assembly, That it shall be lawful to open books in the town of Winchester, under the direction of James Marshall, Henry M. Brent and Philip A. Machir; and in the town of Harrisonburg, under the direction of John S. Lewis, Allen C. Bryant and Robert Kyle; and in the town of Covington, under the direction of Samuel Price, J. Caldwell, Patrick Beirne, Granville Alderson; and in the town of Lewisburg, under the direction of Johnson Reynolds, Claudius Buster and J. L. Fry, and in the town of Charleston, under the direction of John M. Doddridge, John G. Wright and Dr. S. Patrick, and in the town of Point Pleasant, under the direction of John Hall, William Wetzel and James Capehart; and in the town of Guyandotte, under the direction of John Laidley, John Buffington and John Everett; or either of them, at each place named, and at such other places and under the direction of such agents as any of the above named commissioners may designate, for the purpose of receiving subscriptions to the amount of twenty thousand shares of one hundred dollars each, to constitute a joint capital stock for the purpose of constructing a rail road from Winchester, in the county of Frederick, to the town of Charleston, in the county of Kanawha, with the privilege of extending branches to connect with the Lexington and Big Sandy railroad, and also with the Virginia and Tennessee rail road, at the most eligible points; Provided, however, that the branch, to extend from the main stem, at or near Covington, in the

Number of shares.

county of Alleghany, to the Virginia and Tennessee rail road, shall not be constructed until the main stem shall be completed from Covington to Charleston, on the navigable waters of the Kanawha river, and from the town of Covington, in the county of Alleghany, to the town of Winchester, in the county of Frederick, and providing everything necessary and proper for the convenient transportation of persons and property on the rail road and branches.

Subscription.

2. The said books to be opened and the subscriptions received in the manner prescribed in the code of Virginia, prescribing general regulations for the incorporation of rail road companies, and when two thousand shares of the said capital stock shall have been subscribed, the subscribers, their executors, administrators and assigns shall be and are hereby incorporated into a company politic and corporate, by the name and style of "The Charleston and Winchester Rail Road Company," subject to all the provisions and entitled to all the benefits of the aforesaid code, except so far as the provisions of this act are or may be consistent therewith.

Name of company.

Privileges and powers.

3. The company hereby incorporated shall have full right and privilege, and is hereby authorized and empowered to intersect and connect their said railroad with any railroads at or between the points designated, but it shall not be lawful for said Charleston and Winchester rail road company to discriminate on freight and passengers to the prejudice of any of the said companies, taking stock in this company, by charging less on that part of said road east of the points of intersection with said roads than on the part or parts west thereof respectively.

4. If the capital stock of said company shall be insufficient for the purposes of this act, the said company shall have the power, and are hereby authorized to increase the same by the addition of as many shares as may be deemed necessary. And said company shall have power to borrow money for the purpose of carrying out the object of this act, and to pledge the property of the company for the payment of the same, and for the interest that may accrue thereon; and said company shall have power to construct so much of their said rail road as the amount subscribed may allow, and shall have five years from the passage of this act to commence the same.

Loans.

Within what time the road may be commenced.

What railroad companies may subscribe to capital stock.

5. And it shall be lawful for the Winchester and Potomac rail road company, the Manassas Gap rail road company, the Alexandria, Loudon and Hampshire rail road company, the Virginia Central rail road company, the Orange and Alexandria rail road company, and the Virginia and Tennessee rail road company, to subscribe to the capital stock of the company to be chartered under this act in like manner as individuals; and the said companies, or either of them, may provide for the payment of such subscriptions, either in money, or by mortgage or transfer of any parts of the roads or property of the said companies, or either of them respectively, to the said company chartered by this act, the value of which to be ascertained by

How value to be ascertained.

four disinterested engineers to be appointed for that purpose, two of whom shall be appointed by the board of public works and two by the company, which engineers, in case of disagreement, may choose an umpire whose decision shall be final unless good cause be shown to the contrary. And it shall be lawful for the board of public works to subscribe on the part of the State, to the capital stock of this company to the amount of the value of, and to be paid for in the transfer by them, of all the work or works and improvements made by the State on State account, in tunneling the Alleghany mountains, together with all other work or works and improvements made on the Covington and Ohio railroad; the amount and the value thereof, if not agreed on by the parties, to be ascertained by disinterested and competent engineers, at a sum not less than seventy-five per cent. on the original cost, to be chosen equally by the parties, and upon their failure to agree, they shall select an umpire, whose valuation and determination in the premises shall be sufficient to settle the matters of disagreement between the said parties unless good cause be shown against their award.

Board of public works may subscribe.

And in the event of the subscription by the board of public works to the said stock, as proposed and the organization of the said company in pursuance of this act, then the State shall be a stockholder therein to the extent and assessed value of such subscriptions.

Increase of capital stock of railroads subscrib-

And the said railroad companies, to enable them to subscribe to the capital stock of this company are authorized to increase their capital stocks, respectively by the amounts which they shall have so subscribed respectively.

Such parts of the code as are inconsistent with this act not to apply.

6. So much and such parts of the code of Virginia hereinbefore recited, or of any other act or acts as may be inconsistent with any of the provisions of this act, shall be held not to apply to the company hereby incorporated, so far as the same may effect the charter hereby granted by this act; provided, however, that for all other purposes, the same shall have the same force and effect as if this act had never passed.

Proviso.

Commencement.

7. This act shall be in force from its passage.

CHAP. 73.—An ACT providing for taking the sense of the voters of the counties of Accomac and Northampton, whether or not they will be annexed to Maryland.

Passed February 13, 1862.

Duties of sheriffs elect.

1. Be it enacted by the General Assembly, That it shall be the duty of the Sheriffs elect of the counties of Accomac and Northampton to cause polls to be opened on the fifteenth day of March next, at the various voting places in said counties, upon the question whether or not they will be annexed to the State of Maryland.

2. The Sheriffs shall cause books to be opened at the said several voting places in said counties, in which there shall be two columns, one headed "For Annexation," the other "Against Annexation;" and shall cause the names of all the voters voting for annexation to be entered in the column headed "For Annexation," and the names of all the voters voting against annexation entered in the column headed "Against Annexation." Polls how headed.

3. The said Sheriffs elect shall have the power to appoint commissioners to superintend and officers to conduct the vote so to be taken, and shall procure everything necessary for carrying out the provisions of this act, and shall within ten days from the said fifteenth day of March, send the result of the election to the secretary of the commonwealth of Virginia, to be preserved by him in his office. Commissioners how appointed. Result to be sent to Sec. of Commonwealth within ten days

4. The said sheriffs elect shall before entering upon the duties prescribed by this act each take the oath appointed under the provisions of this act to be duly sworn before entering upon their duties. Oath.

5. This act shall be in force from its passage. Commencement.

CHAP. 74.—An ACT giving the consent of the Legislature of the State of Virginia to the purchase, by the United States, of land for a Cemetery.

Passed February 13, 1862.

1. Be it enacted by the General Assembly, That the consent of this General Assembly is given to the purchase, by the United States of America, of not exceeding twenty acres of land, in the county of Alexandria or Fairfax, in this State, for the purpose of a place of interment of persons dying in the service of the United States. Consent of general assembly given to purchase by U. S. of not exceeding 20 acres land in Alexandria or Fairfax counties for cemetery.

2. This act shall be in force from its passage. Commencement.

CHAP. 75.—An ACT to abolish an election precinct in the county of Harrison.

Passed February 13, 1862.

1. Be it enacted by the General Assembly of Virginia, That the election precinct now authorized by law to be held at Swisher's Mills, in the county of Harrison be, and the same is hereby abolished. The election precinct at Swisher's mills in county of Harrison abolished.

2. This act shall be in force from its passage. Commencement.

CHAP. 76.—An ACT authorizing the Adjutant General to employ a clerk, and to regulate the salary of such clerk.

Passed February 13, 1862.

1. Be it enacted by the General Assembly, That the Adjutant General be, and is hereby authorized to employ a clerk, at a salary no to exceed the sum of five hundred dollars per annum. Adjutant General authorized to employ a clerk, Salary.

$500 appropriated.
How payable.

2. The sum of five hundred dollars annually is appropriated for the payment of the salary of such clerk. The same, or so much thereof as may be required shall be paid monthly on the certificate or order of the Adjutant General.

Commencement.

3. This act shall be in force from its passage.

CHAP. 77.—An ACT to take the sense of the voters of Calhoun county in relation to removing the county seat of said county.

Passed February 13, 1862.

Lawful to open polls on the 4th Thursday in May after the present war is over to take sense of voters of Calhoun county as to location of county seat of Calhoun.

1. Be it enacted by the General Assembly, That it shall be lawful to open polls at the various places of voting in the county of Calhoun, on the fourth Thursday in May after the present war is over, for the purpose of taking the sense of the voters of said county, whether they will retain the county site at the place now fixed by law, at Arnoldsburg, in said county, or remove the same to Simon P. Stump's farm, opposite the mouth of Phillip's run on the Little Kanawha river, in said county.

Copies of this act to be posted at all places of voting two months before voting.

2. That two months before voting on the aforesaid question, there shall be posted at all the places of voting in said county, copies of this act.

How poll books to be headed.

3. That the poll books shall have two columns, one headed "For Arnoldsburg," and the other "For Simon P. Stump's farm," and which ever place receives the greater number of votes, shall be the permanent county site of said county of Calhoun.

Poll books to be returned to the clerk's office.
Duty of court.
Who authorized to vote at said election.

4. That said voting to be held and conducted as prescribed by law for members of the General Assembly, and the poll books are to be returned to the clerk's office within five days thereafter, and the first court held in the said county, after the poll books are returned, shall count the vote and make and enter an order in the order book of the said county, which point of the two specified had the greatest number of votes. No person shall vote at said election except those now authorized by law, and the court counting said vote may investigate the legality of the votes.

Commencement.

5. This act shall be in force from its passage.

CHAP. 78.—An ACT to amend the Charter of the City of Wheeling.

Passed February 13, 1832.

Sec. 1 of an act passed March 1, 1854, entitled an act to amend the act passed March 11, 1836, entitled an act to incorporate the city of Wheeling, amended and re-enacted.

Be it enacted by the General Assembly, That the first section of an act passed March first, eighteen hundred and fifty-four, entitled an act to amend the act passed March eleventh, eighteen hundred and thirty-six, entitled an act to incorporate the city of Wheeling, shall be and the same is amended and re-enacted so as to read as follows:

1. That the council of said city shall have authority to levy an annual tax on all the real estate and tithables within the limits of said city, without exception; provided, that such tax shall not, in any one year, exceed the sum of fifty cents on each tithable, and fifty cents on every hundred dollars of the value of said real estate. And provided that nothing contained in this act shall be so construed as to authorize the taxation of the real estate lying and being situate on Zane's Island, owned by the legal representatives, heirs or devisees of Daniel Zane, or the trustees of Ebenezer Zane's estate, or owned by Richard V. Whelan, so long as the same shall continue to be owned by them, their legal representatives, heirs or devisees, or held under said trust, otherwise than the same would be taxable if this act had not passed, except that any part of the same may be taxed when laid out in town lots. And for the purpose of ascertaining such value the council shall, annually, appoint one assessor from each ward, which assessors shall be freeholders in said city, and shall be sworn impartially and faithfully to make such appraisement.

Power to levy tax on real estate and tithables in said city.

Proviso.

Further proviso.

Exception.

Assessors.

2. This act shall be in force from its passage.

Commencement.

CHAP. 79.—An ACT to extend and keep in force certain entries and surveys.

Passed February 13, 1862.

1. Be it enacted by the General Assembly, That all entries and surveys which have expired by limitation since the seventeenth of April last, or which may hereafter expire, shall be extended and continued in force, and held firm and valid, and all the rights and equities acquired thereby, shall be preserved and continued unimpaired, as fully as if no such lapse of time had occurred, until three years after the time when the general assembly may provide, by law, the manner and means by which the claimants may have such entries or surveys carried into grant.

When entries and surveys to be extended and continued in force.

2. This act shall be in force from its passage.

Commencement.

CHAP. 80.—An ACT giving the consent of the Legislature of the State of Virginia to the purchase, by the United States, of land and places which may be needed by the Government of the United States, for the erection of Forts, Magazines, Arsenals, Dockyards and other needful buildings.

Passed February 13, 1862.

1. Be it enacted by the General Assembly, That the consent of the general assembly of Virginia be, and is hereby given to the purchase by the United States government, of any and all places that may be needed within this state for the purpose of erecting thereon forts, magazines, arsenals, dockyards and any other needful buildings.

Consent given U S. government by general assembly for the purchase of any and all places needed for the erection of forts, magazines, &c., within this state.

Concurrent jurisdiction retained.

2. It is hereby declared that this state retains concurrent jurisdiction with the United States over all such places as may be purchased by virtue of this act, so far as it is lawfully consistent with this act; and its courts, magistrates and officers may take such other legal functions, within the same, as may not be incompatible with the true intent and meaning of this act.

Commencement.

3. This act shall be in force from its passage.

CHAP. 81.—An ACT establishing a place of voting at Maxwell's Mills, in the County of Barbour.

Passed February 13, 1862.

Place of voting established at J. Maxwell's Mills, in Barbour county.

1. Be it enacted by the General Assembly, That it shall be lawful to establish a place of voting at John Maxwell's mills, in the county of Barbour.

Commencement.

2. This act shall be in force from its passage.

CHAP. 82.—An ACT releasing the loyal citizens of Accomac and Northampton from the payment of certain militia fines.

Passed February 13, 1862.

Fines imposed on loyal citizens of Accomac and Northampton counties released.

1. Be it enacted by the General Assembly, That the fines imposed upon all loyal citizens of Accomac and Northampton counties by secession courts of inquiry and courts martial, from the first of April, eighteen hundred and sixty-one, to the first of December, eighteen hundred and sixty-one, be and are hereby released.

Commencement.

2. This act shall be in force from its passage.

CHAP. 83.—An ACT authorizing the Governor to issue Commissions to Justices of the Peace, in certain cases, in less than thirty days after their election.

Passed February 13, 1862.

Governor authorized to issue commissions immediately to justices, on return of their names by commissioners of elections.

1. Be it enacted by the General Assembly, That the governor of this commonwealth be, and he is hereby authorized, to issue commissions to the justices of the peace immediately on the return of their names by the commissioners of elections, in all the counties in this state, which has or hereafter may be reorganized under the ordinance of the convention which assembled at Wheeling on the eleventh of June last.

Commencement.

2. This act shall be in force from its passage.

CHAP. 84.—An ACT to provide for the extension of time for Sheriffs of this Commonwealth to execute writs of *fieri facias* on certain Judgments.

Passed February 13, 1862.

1. Be it enacted by the General Assembly, That the present sheriffs in the commonwealth shall be allowed twelve months after the expiration of the present stay law, to execute any writs of *fieri facias* issued on judgments in any of the county or circuit courts of this commonwealth during the present term of said sheriffs, respectively, the same as if they were issued during the term of said sheriffs.

Present sheriffs allowed twelve months after expiration of present stay law to execute any writ of fieri facias.

2. It shall be the duty of the clerks of the several county and circuit courts to direct all such writs to the said present sheriffs, as if the same had been issued during their said term as aforesaid.

Duty of clerks of county and circuit courts.

3. This act shall be in force from its passage. Commencement.

CHAP. 85.—An ACT to amend and re-enact Section third of an act entitled "An act to amend the charter of Alexandria."

Passed February 13, 1862.

1. Be it enacted by the General Assembly, That the "third" section of the act passed on the seventh day of May, eighteen hundred and fifty-two, entitled "An act to amend the charter of Alexandria," be and the same is hereby amended and re-enacted, so as to read as follows: "Every white male citizen of this state who shall possess the qualifications and requirements of a voter for the general assembly, and who shall moreover have resided in said city one year, and in the ward in which he offers to vote one month next preceding the election, and none others, shall be qualified to vote for members ~~in~~ the city council in the said city, and all officers of the corporation elective by the people: and in all elections the vote shall be given *viva voce* and not by ballot, but dumb persons entitled to suffrage may vote by ballot; and every person qualified shall vote in the ward in which he is a resident, and not elsewhere. Provided, no persons shall be allowed to vote at any election held under authority of this act, who, if required so to do by any person, shall, when he offers to vote, refuse to take the oath or affirmation required by the fourth section of the ordinance passed June nineteenth, eighteen hundred and sixty-one, entitled 'An ordinance for the re-organization of the state government,' which said oath or affirmation may be administered by any commissioner superintending the election; and provided, also, that no person shall be allowed to vote in any such election unless he shall have been assessed with a tax for the preceding year on the books of the corporation and shall have paid such tax.

Sec. 3 of the act passed May 7, 1852, entitled 'An act to amend the Charter of Alexandria' amended and re-enacted.

Who qualified to vote for members of city council.

Viva Voce.

Proviso.

Oath.

Tax.

2. This act shall be in force from its passage. Commencement.

CHAP. 86.—An ACT for the incorporation of the Little Falls Railroad Company.

Passed February 13, 1862.

When. where and by whom books of subscription may be opened.

Capital stock.

Shares.

1. Be it enacted by the General Assembly of Virginia, That it shall be lawful for Peter Hendricks, Thomas Emigh, Moses A. Cummins, Lewis Mackenzie and John Hawxhurst, or any three of them, or such agents as they may appoint, to open books of subscription at such time and such places as they think best, in order to raise the sum of seven hundred and fifty thousand dollars, in shares of one hundred dollars each, to constitute a joint capital stock to construct a railroad from some point on or near the Alexandria, Loudon and Hampshire road, between Arlington Station and Difficult Run, to the Potomac river at some point between the Chain Bridge and the Long Bridge, and shall have the right (so far as the state can grant) to bridge said river, or to purchase the privilege of crossing on any bridge or structure now there or may be made thereafter, or may consolidate their capital stock and all other rights and interests they may require with the Alexandria, Loudon and Hampshire railroad.

When $50,000 shall have been subscribed, to be a body corporate and politic.

2. Be it further enacted, that when fifty thousand dollars shall have been subscribed by individuals or corporations, the subscribers, their executors or assigns, shall be a body corporate and politic under the name and style of the "Little Falls Railroad Company," subject to the code of Virginia, so far as the same may be consistent with this act.

Authorized to borrow money.

3. The said company shall have power to borrow money for the purpose of carrying out the objects of this act, and may issue proper certificates or evidences of such loans, and may pledge the road and property for payment of interest by deed of trust or otherwise.

4. And said company may contract with the Alexandria, Loudon and Hampshire railroad, or any person or company, for the furnishing and operating the rolling stock, or may build and operate it themselves.

Time in which to commence work.

5. The company may have eight years in which to commence the work.

Commencement.

6. This act shall be in force from its passage.

CHAP. 87.—An ACT appropriating the Public Revenue for the fiscal years 1861-2, 1862-3, and a part of the fiscal year 1863-4.

Passed February 13, 1862.

General Fund.

1. Be it enacted by the General Assembly, That the surplus of all appropriations made prior to the thirtieth of September, eighteen hundred and sixty-one, and any and all monies in the treasury not otherwise appropriated at the close of the fiscal year, ending September thirtieth, eighteen hundred and sixty-one, as well as all monies

that shall come into the public treasury from and after the thirtieth day of September, eighteen hundred and sixty-one, to the close of the fiscal year ending the thirtieth of September, eighteen hundred and sixty-two, shall constitute a general fund, and be appropriated for the fiscal year ending September thirtieth, eighteen hundred and sixty-two, as follows, to wit:

To expenses of the General Assembly for the session commencing on the second day of December, eighteen hundred and sixty-one, including pay of officers, printing, stationery, &c., twenty-five thousand dollars.

Expenses of general assembly $25,000.

To Thomas Hornbrook, Esq., for expenses in preparing halls for the Senate and House of Delegates, gas, fuel, &c., four hundred and ninety dollars and thirty-three cents.

Expenses in preparing halls for Senate and House of Delegates, $490,33.

To salaries of officers of civil government, ten thousand dollars.

Salaries of officers, $10,000.

To allowances for judiciary, including salaries of judges, attorneys for the commonwealth, and mileage, thirty thousand dollars.

Judiciary $30,000

To defraying criminal charges including expenses of jurors, witnesses and jailors, fifteen thousand dollars.

Criminal charge &c., $15,000.

To contingent expenses of courts of the commonwealth, five thousand dollars.

Contingent expenses of courts $5,000.

To expenses of convicts in jails, or other places, including transportation, ten thousand dollars.

Expenses of convicts &c., $10,000.

To expenses of lunatics in jails, or in asylums in other States, including transportation, ten thousand dollars.

Expenses of lunatics &c., $10,000.

To salary of adjutant-general, one thousand two hundred dollars.

Salary of adjutant general, $1,200.

To public printer, three thousand dollars.

Public printer $3,000.

To expenses of elections, one thousand two hundred dollars.

Expenses of elections $1,200.

To pay of commissioners of the revenue, twenty-five thousand dollars.

Pay of commissioners of revenue $25,000.

To expenses of coroner's inquests, two thousand dollars.

Expenses of coroner's inquests, $2,000.

To contingent expenses of the offices of the auditor and treasurer, including books, stationery, fuel, postage, printing, &c., three thousand five hundred dollars.

Contingent expenses of offices of auditor and treasurer, &c., $2,500.

To the trustees of Linsley Institute for the use of their building during the session of the General Assembly, commencing December second, eighteen hundred and sixty-one, at five dollars per day.

Trustees of Linsley institute $5 per day.

To contingent expenses of the offices of the secretary of the commonwealth and adjutant-general, five hundred dollars.

Contingent expenses of offices of secretary of commonwealth and adjutant general, $500.

To pay clerks in auditor's office, at the discretion of the auditor, not to exceed one thousand two hundred dollars.

Pay of clerks in auditor's office.

Salary of clerk of treasury, $200.

To salary of the clerk of the treasury, two hundred dollars.

Expenses of militia, $3,000.

To expenses of the militia of the State, since the first day of April, eighteen hundred and sixty-one, to be paid upon the certificates of the regimental courts, and countersigned by the commandant of the regiment, five thousand dollars.

Expenses board of public works, $50.

To expenses of board of public works, fifty dollars.

Expenses of patrols and State volunteers, $4,000.

To pay, and expenses of patrols and State volunteers for services heretofore rendered, to be allowed by the auditor upon the certificate of the governor, four thousand dollars.

Civil contingent fund, $20,000.

To civil contingent fund, twenty thousand dollars.

Janitor.

To janitor for public offices, to be paid upon the certificate of secretary of the commonwealth, one dollar per day.

Clerk of house of delegates, $40.

To the clerk of the house of delegates, forty dollars.

Clerk of Senate, $20.

And to the clerk of the senate, twenty dollars.

In addition to their present compensation.

No officer in State service, who has not taken the oath required by the ordinance for the re-organization of the State government, or having taken said oath, has been disloyal, entitled to claim or receive any sum of money by virtue of this act.

2. Be it further enacted, That no judge, attorney for the commonwealth, or other officer in State service, who has not taken the oath required by the ordinance for the re-organization of the State government, or having taken said oath, has been disloyal to the United States, or the reorganized government of this State, shall be entitled to claim or receive any sum of money by virtue of this act.

What constitutes a general fund to defray expenses, &c.

3. Be it further enacted, That so much of the public revenue as may be received into the public treasury after thirtieth of September, eighteen hundred and sixty-two, and the surplus of all other appropriations made prior to that date, and all other monies not otherwise appropriated by law, shall constitute a general fund to defray such expenses authorized by law as not herein particularly provided for, and to defray the current expenses of the commonwealth in the fiscal year ending September thirtieth, eighteen hundred and sixty-three, and until the first of April, eighteen hundred and sixty-four. And the auditor of public accounts is hereby authorized and required to issue his warrants in the same manner as if the sums had been specifically mentioned, subject to such exceptions, limitations and conditions as the General Assembly have prescribed or may prescribe by law; provided, that nothing in this act contained shall be so construed as to authorize the auditor to issue his warrant in satisfaction of any judgment or decree of any court of law or equity against the commonwealth for a sum exeeding three hundred dollars.

Proviso.

Commencement.

2. This act shall be in force from its passage.

CHAP. 88.—An ACT changing the place of holding an election in the county of Taylor.

Passed February 13, 1862.

Place of election discontinued.

1. Be it enacted by the General Assembly, That the separate election heretofore authorized to be holden at the house of Robert Reed, in the second magisterial district of the county of Taylor, shall be and the same is hereby discontinued; and in lieu thereof the usual election for said second district shall be holden at the house of Nelson Grey, on Booth's creek, in said county; at which election precinct all persons qualified by law to vote in said district, may vote.

Place of election established.

Commencement.

2. This act shall be in force from its passage.

CHAP. 89.—An ACT providing for making out Commissioner's Books in certain counties, towns and cities of the Commonwealth for the year 1861.

Passed February 13, 1862.

Additional duties of commissioners of the revenue where there are no commissioner's books in any town, county or city of the commonwealth.

1. Be it enacted by the General Assembly of Virginia, That in addition to the duties now prescribed by law for commissioners of the revenue in any town, county or city of the commonwealth where there are no commissioner's books for the year eighteen hundred and sixty-one, it shall be the duty of the commissioners of the revenue in said towns, cities and counties, from the best information within their reach, to prepare land, property and capitation books for the said year eighteen hundred and sixty-one, furnishing clerks, auditor and sheriff or collector of the public revenue with the same, as now required by law; and the said commissioners of the revenue for their services shall receive two-thirds of the compensation that is now fixed by law for the same service in said towns, counties and cities, to be paid by the auditor of public accounts upon vouchers such as are now required by law.

Compensation.

Commencement.

2. This act shall be in force from its passage.

JOINT RESOLUTIONS.

No. 1.—Joint Resolution as to pay of Janitor of General Assembly.

Passed January 4, 1862.

Resolved, That the janitor for the general assembly receive two dollars per day for his services during the sittings of the general assembly.

No. 2.—Resolution instructing the Governor to inform the Secretary of the Treasury of the United States that we cannot, under existing circumstances, assume the payment of Virginia's portion of the direct tax.

Passed January 9, 1862.

Resolved, by the General Assembly, That the governor be instructed to inform the secretary of the treasury of the United States, that we cannot, under existing circumstances, assume the payment of Virginia's portion of the direct tax. But that so soon as the rebellion shall be suppressed within the limits of Virginia by the government of the United States, the armed forces of the so-called Confederate States driven from our soil, and the loyal state government restored to our whole people, it will be the pleasure of this government to assume the collection and payment of Virginia's quota of said tax, as proposed; as the loyal portion of the state has already contributed its quota to the army of the country.

No. 3.—Joint Resolution directing the Auditor of Public Accounts to settle with the late Sheriff of Preston County.

Passed January 16, 1862.

Resolved, by the General Assembly, That the auditor of public accounts be directed to settle with the late sheriff of Preston county, allowing him his delinquent list of land, property and capitation tax for eighteen hundred and sixty, if found by the auditor to be correct, upon the condition that the said sheriff pay into the treasury any sum, upon settlement found due the state.

No. 4.—Joint Resolution to elect Major Generals and Brigadier Generals.

Passed January 17, 1862.

Resolved, That this house, the senate concurring, will proceed on Wednesday, the twenty-second instant, to elect major generals for the third and fifth divisions, and brigadier generals for the tenth, twentieth, twenty-second, twenty-third, twenty-fourth and twenty-seventh brigades of state militia.

No. 5.—Joint Resolution to elect Secretary of the Commonwealth, Treasurer, Auditor of Public Accounts, and Public Printer.

Passed January 17, 1862.

Resolved, That this house will, with the concurrence of the senate, proceed on Saturday, the eighteenth instant, to the election of a secretary of the commonwealth, a treasurer, an auditor of public accounts, and a public printer.

No. 6.—Joint Resolution authorizing the Governor to withdraw from the office of the Auditor of Public Accounts any claim or voucher paid upon his order out of the Civil Contingent Fund properly chargeable to the General Government, &c.

Passed January 22, 1862.

Resolved, by the General Assembly of Virginia, That the governor of the commonwealth be, and he is hereby authorized to withdraw from the office of the auditor of public accounts, any claim or voucher paid upon his order out of the civil contingent fund properly chargeable to the general government, also, any claim or voucher paid upon his order, out of the appropriation for military purposes, up to this date, that is properly chargeable to the general government; the governor in such cases leaving with the auditor of public accounts a list, properly certified by him as correct, with the amount of the claim, to whom it was paid, and the number of the auditor's warrant.

No. 7.—Joint Resolution directing the Auditor of Public Accounts to settle with Jackson Reed, Sheriff of Marshall County, &c.

Passed January 28, 1862.

Resolved, by the General Assembly, That the auditor of public accounts be directed to settle with Jackson Reed, sheriff of Marshall county, allowing him his delinquent list of land, property, capitation and license tax for eighteen hundred and sixty, if found by the auditor to be correct, upon the condition that the said sheriff pay into the treasury any sums upon settlement found due the state.

No. 8.—Joint Resolution directing the Auditor of Public Accounts to settle with James I. Kuhn, Sheriff of Brooke County, &c.

Passed January 23, 1862.

Resolved, by the General Assembly, That the auditor of public accounts be directed to settle with James I. Kuhn, sheriff of Brooke county, allowing him his delinquent list of land, property, capitation and license tax for eighteen hundred and sixty, if found by the auditor to be correct, upon the condition that the said sheriff pay into the treasury any sums upon settlement found due the state.

No. 9.—Joint Resolution requesting the Secretary of War to hold certain prisoners as hostages for Matthew P. Wyatt and Charles Levans, citizens of Kanawha County.

Passed January 29, 1862.

Whereas, Matthew P. Wyatt and Charles Levans, old, venerable and respected citizens of Kanawha county, holding responsible positions therein, were, on the twenty-fourth of October last, while in the discharge of the legitimate civil duties, imposed upon them by the offices and appointments they held under commissions and by the appointment of the governor of this commonwealth, violently and cruelly seized by a band of armed men, claiming and professing to be acting under the authority of the so-called Confederate States of America, and carried into the limits or jurisdiction of the said Confederate States, so-called, and (as this legislature has been informed) compelled to undergo hardships and perform duties entirely unsuited to their age and former habits of life, and whereas, many ineffectual appeals have been made in various ways for their release, therefore be it

Resolved by the General Assembly of Virginia, That the secretary of war be and is hereby requested to select from among the prisoners now held by the government of the United States, or that may hereafter be taken for that purpose, two or more of like standing and condition and holding like or similar relations to the government of the so-called Confederate States, as hostages for the release of the persons above named, and to make an unconditional demand for the immediate release of those persons, accompanied with the assurance that whatever inflictions, punishments or penalties have been or may be imposed upon the persons thus demanded, will be inflicted upon the persons so held; or to take such other measures as may be necessary and effectual for the purpose of securing the object mentioned.

Resolved, That the governor of this commonwealth be respectfully requested forthwith to transmit to the secretary of war a copy of this resolution.

No. 10.—Joint Resolution authorizing the Governor to take such steps as he may think proper for the apprehension of certain offenders.

Passed January 31, 1862.

Whereas, It is represented to the general assembly of Virginia that certain base and wicked disposed persons have, since the existence of hostilities by the Confederate States against the government of the United States of

America, under pretence of belonging to the armies of the said Confederate States have armed and embodied themselves, producing terror and dismay among the loyal citizens of this state, and have bid defiance to law and order; and whereas, houses have been pillaged, farms laid waste, together with all manner of outrage unknown to civilization; and whereas, many good and loyal citizens have been brutally murdered by those marauders while engaged in their lawful pursuits at home; and whereas, it appears that many of those outlaws have been captured by the government troops and are confined as prisoners of war; and whereas, in fact they had never belonged to the Confederate army—and if they had, in the opinion of this legislature, they cannot thereby relieve themselves from their responsibility to the state authorities.

Be it therefore Resolved by the General Assembly of Virginia, That the governor be requested, and he is hereby authorized to take such steps and pursue such course as he, in his wisdom, may think most prudent to secure the apprehension of those offenders, and have them placed in the hands of the proper state authorities, to be dealt with according to existing state laws.

No. 11.—Joint Resolution in reference to amendment of the Constitution of the United States.

Passed February 13, 1862.

Whereas, In pursuance of the fifth article of the constitution of the United States, the congress adopted the following joint resolution, which was approved March, eighteen hundred and sixty-one, viz:

Resolved by the Senate and House of Representatives of the United States of America, in Congress assembled, That the following article be proposed to the legislatures of the several states as an amendment to the constitution of the United States, which when ratified by three-fourths of said legislatures shall be valid to all intents and purposes as part of said constitution, viz:

ARTICLE THIRTEEN.

"No amendments shall be made to the constitution which will authorize or give to congress the power to abolish or interfere, within any state, with the domestic institutions thereof, including that of persons held to labor or service by the laws of said state."

Upon consideration whereof,

Resolved by the General Assembly of Virginia, That the said proposed amendment be, and the same is hereby ratified, and declared to be valid, to all intents and purposes as part of said constitution, when ratified by three-fourths of said legislatures.

No. 12.—Joint Resolution in reference to payment of Clerks of Regimental Courts of Inquiry for services at Battalion Courts.

Passed February 13, 1862.

Whereas, It appears to the general assembly that the auditor of public accounts construes existing laws so as not to authorize the payment of clerks of regimental courts of inquiry for their services at battalion courts, thereby reversing the construction heretofore given to the law on that subject, and thereby cutting off the payment of such clerks for services performed under the construction heretofore given to the law, therefore,

Resolved, That it is the opinion of the general assembly that the existing laws do authorize the payment, out of the treasury, to clerks of regimental courts for their services at battalion courts, the compensation authorized by the twenty-fourth section of chapter thirty-one of the code of eighteen hundred and sixty-one, to be paid to said clerks for their services to regimental courts.

No. 13.—Joint Resolution fixing time of Adjournment.

Passed February 13, 1862.

Joint Resolution fixing Thursday, February thirteenth, eighteen hundred and sixty-two, as the day of adjournment *sine die.*

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ACTS

OF THE

GENERAL ASSEMBLY,

PASSED AT THE

EXTRA SESSION,

HELD MAY SIXTH, 1862,

AT THE CITY OF WHEELING.

WHEELING, VIRGINIA:
1862.

[17]

ACTS OF THE GENERAL ASSEMBLY.

CHAP. 1.—An ACT giving the consent of the Legislature of Virginia to the formation and erection of a new State within the jurisdiction of this State.

Passed May 13, 1862.

Consent of legislature.

Name of new State.

Counties proposed to be embraced in new State.

1. Be it enacted by the General Assembly, That the consent of the Legislature of Virginia be, and the same is hereby given to the formation and erection of the State of West Virginia, within the jurisdiction of this State, to include the counties of Hancock, Brooke, Ohio, Marshall, Wetzel, Marion, Monongalia, Preston, Taylor, Tyler, Pleasants, Ritchie, Doddridge, Harrison, Wood, Jackson, Wirt, Roane, Calhoun, Gilmer, Barbour, Tucker, Lewis, Braxton, Upshur, Randolph, Mason, Putnam, Kanawha, Clay, Nicholas, Cabell, Wayne, Boone, Logan, Wyoming, Mercer, McDowell, Webster, Pocahontas, Fayette, Raleigh, Greenbrier, Monroe, Pendleton, Hardy, Hampshire and Morgan, according to the boundaries and under the provisions set forth in the constitution for the said State of West Virginia and the schedule thereto annexed, proposed by the convention which assembled at Wheeling, on the twenty-sixth day of November, eighteen hundred and sixty-one.

Additional counties.

2. Be it further enacted, That the consent of the legislature of Virginia be, and the same is hereby given, that the counties of Berkley, Jefferson and Frederick, shall be included in and form part of the State of West Virginia whenever the voters of said counties shall ratify and assent to the said constitution, at an election held for the purpose, at such time and under such regulations as the commissioners named in the said schedule may prescribe.

Executive to transmit this act to senators and Representatives of this Commonwealth in Congress. Also certified original of constitution and schedule.

3. Be it further enacted, That this act shall be transmitted by the executive to the senators and representatives of this commonwealth in congress, together with a certified original of the said constitution and schedule, and the said senators and representatives are hereby requested to use their endeavors to obtain the consent of congress to the admission of the State of West Virginia into the Union.

Commencement.

4. This act shall be in force from and after its passage.

CHAP. 2.—An ACT declaring the boundary lines of farms, in certain counties, lawful fences.

Passed May 12, 1862.

Boundary lines of fences or plantations in Alexandria, Fairfax, Loudoun and Prince William counties declared lawful fences.

1. Be it enacted by the General Assembly of Virginia, That in the counties of Alexandria, Fairfax, Loudoun and Prince William, the boundary line of each farm or plantation, shall be deemed and is hereby declared a lawful fence.

Commencement.
Expiration.

2. This act shall be in force from its passage and remain in force for two years.

CHAP. 3.—An ACT for the relief of I. N. Irwin, clerk of the Fourth Regiment of Virginia Militia.

Passed May 13, 1862.

Allowance of twenty-five dollars to I. N. Irwin, clerk of 4th regiment of Virginia militia in addition to the sum allowed by law.

Auditor to pay said sum out of appropriation to expenses of militia.

1. Be it enacted by the General Assembly of Virginia, That I. N. Irwin, clerk of the fourth regiment of Virginia militia, be allowed the sum of twenty-five dollars, in addition to the sum allowed by law, for making out and delivering tickets for militia fines, and taking sheriff's receipts for the same, and that the auditor of public accounts pay said sum out of the appropriation to expenses of militia of the State, made in the act, appropriating the public revenue, passed February thirteenth, eighteen hundred and sixty-two, to the order of I. N. Irwin.

Commencement.

2. This act shall be in force from its passage.

CHAP. 4.—An ACT entitled an Act to amend and re-enact the 1st and 3d sections of an Act, entitled an Act, providing for the election of Mayor and Common Council and other officers of the town of Martinsburg, and to define their duties and powers, passed March 6th, 1856.

Passed May 13, 1862.

The 1st and 3rd sections of an act entitled an act providing for election of mayor and common council and other officers of the town of Martinsburg, and to define their duties and powers passed March 6, 1856, amended and re-enacted.

Election for mayor when to take place.

Term of office.

Be it enacted by the General Assembly of Virginia, That the first and third sections of an act, entitled an act, providing for the election of mayor and common council and other officers of the town of Martinsburg, and to define their duties and powers, passed March sixth, eighteen hundred and fifty-six, be amended and re-enacted so as to read as follows: Be it enacted by the General Assembly of Virginia, That on the fourth Monday in May, eighteen hundred and sixty-two, and on the same day, annually thereafter, the voters of the town of Martinsburg, in the county of Berkley, qualified to vote for members of the general assembly, who shall have resided within said town for one year next preceding the election, and who shall have paid the corporation taxes assessed upon them for that year, shall elect a fit and proper person, being a free-holder and resident of said town, to serve as mayor thereof, for the period of one year, or until his successor be duly elected and qualified. And if from any cause the election for said officers of the said corporation shall not or cannot be held at the time appointed by this act, that the mayor and council shall, and are hereby authorized and empowered to order an election to fill said vacancies, by giving at least ten days notice, to be published in some newspaper published in the town of Martinsburg, or by written or printed notice posted up in at least three public places in said town.

2. Be it further enacted, That the 3d section of said act be amended and re-enacted so as to read as follows: On the fourth Monday in May, eighteen hundred and sixty-two, and on the same day annually thereafter, the voters in each of the said wards qualified to vote for mayor, who shall have also resided ten days in each ward, being freeholders, shall elect two councilmen to represent such ward in the common council, and the commissioners conducting the election shall give a certificate of election to the person elected on the day following the said election. The commissioners in each of the said wards shall assemble, count the votes for mayor and give a certificate of election to the person chosen. The mayor and council shall appoint one or more sergeants for said corporation, to serve for the term of one year.

Two councilmen in each ward to be elected.

3. This act shall be in force from and after its passage.

Commencement.

CHAP. 5.—An ACT for the relief of John M. Greer, late Sheriff of Jackson county, and John Slack, late Sheriff of Kanawha county.

Passed May 13, 1862.

1. Be it enacted by the General Assembly of Virginia, That John M. Greer, late sheriff of Jackson county, be and is hereby authorized to distrain for taxes due and unpaid in the county of Jackson, for the years eighteen hundred and fifty-seven, eighteen hundred and fifty-eight, eighteen hundred and fifty-nine and eighteen hundred and sixty, and that John Slack, late sheriff of Kanawha county and his deputies, be and they are hereby authorized to distrain for taxes due and unpaid in the county of Kanawha, for the years eighteen hundred and fifty-seven and eighteen hundred and fifty-eight, and for which they have duly accounted, and paid over to the State and county treasury.

John M. Greer, late sheriff of Jackson county, authorized to distrain for taxes due and unpaid in the county of Jackson for 1857, 1858, 1859 and 1860.

John Slack, late sheriff of Kanawha county, authorized to distrain for taxes due and unpaid in the county of Kanawha for 1857 and 1858.

Nothing herein contained shall authorize them to distrain for claims returned delinquent.

Not authorized to distrain for delinquent claims.

2. This act shall be in force from its passage.

Commencement.

CHAP. 6.—An ACT to amend the 8th Section of the Ordinance passed June 21st, 1861, entitled "An Ordinance relating to the receipts and disbursements of the Public Revenue, and providing for the appointment of an Auditor, Treasurer and Secretary of the Commonwealth."

Passed May 13, 1862.

The 8th section of the ordinance passed June 21st, 1861, entitled An ordinance relating to the receipts and disbursements of the public revenue and providing for the appointment of an auditor, treasurer and secretary of the commonwealth, amended

1. Be it enacted by the General Assembly of Virginia, That the eighth section of the ordinance, passed June twenty-first, eighteen hundred and sixty-one, entitled "An ordinance relating to the receipts and disbursements of the public revenue, and providing for the appointment of an auditor, treasurer and secretary of the commonwealth," be and the same is hereby amended so as to read as follows:

All monies paid into the public treasury shall be paid into what banks and branches.

Certificates of payment to be given and by whom.

Treasurer to deliver duplicate receipts.

One of said receipts to be handed to auditor of public accounts.

Endorsement to be made on the receipt retained.

"All monies paid into the public treasury, shall be paid into the Merchants' and Mechanics' Bank of Wheeling, at the city of Wheeling, or one of its branches at Point Pleasant, Clarksburg and Morgantown, or into the North Western Bank of Virginia, at Wheeling, or one of its branches at Parkersburg or Wellsburg, or into the Exchange Bank of Virginia at Weston; or if east of the Blue Ridge, into the Exchange Bank of Virginia at Alexandria. All monies of the state collected, in the counties east of the Blue Ridge Mountains, to the credit of *The Treasury of Virginia;* and the person so paying the same, shall take from the proper officer of such bank or branch, a certificate of the fact. The treasurer on the delivery of such certificate, shall retain and file the same, charging the amount therein specified to the proper bank or branch, and delivering to the person who made the payment at bank, duplicate receipts for the amount so paid, specifying in what amount the money was paid. The person making the payment, shall forthwith hand over one of the receipts to the auditor of public accounts, to be retained and filed by him, and charged to the treasurer's account, and upon the other receipt, which is to be retained by the person making the payment, the auditor shall endorse as follows: '*A duplicate hereof has been filed in the auditor's office,*' and affix his signature, and the proper date to such endorsement."

Commencement.

2. This act shall be in force from its passage.

CHAP. 7.—An ACT to amend and re-enact the 35th section of chapter 40 of the Code of Virginia.

Passed May 13, 1862.

Section 35 of chapter 40 of the code, amended and re-enacted.

1. Be it enacted by the General Assembly of Virginia, That the thirty-fifth section of chapter forty of the code of Virginia, be amended and re-enacted so as to read as follows:

"On every license to a broker employing a capital of ten thousand dollars, or a less sum, two hundred dollars. On all sums over ten thousand dollars, two per cent. on the amount of capital employed."

2. All acts and parts of acts heretofore passed, conflicting with this act, are hereby repealed.

All acts and parts of acts conflicting with this repealed.

3. This act shall be in force from its passage.

Commencement.

CHAP. 8.—An ACT for the relief of Thomas Crux.

Passed May 13, 1862.

Preamble.

Whereas, It is represented that on the nineteenth day of December, eighteen hundred and fifty-nine, a warrant was issued by a justice of the peace for Fairfax county, against Thomas Crux, (of the county aforesaid,) who was, by virtue of said warrant, arrested and taken before G. C. Gunel, justice of said county, by James W. Jackson and Joseph Monroe, who were deputed to make such arrest, and said justice admitted Thos. Crux to bail in the sum of twenty-five hundred dollars, for his appearance at the next quarterly court.

And whereas, It is represented that before the setting of the court, the said Monroe and Jackson conspired together, and by threats of personal violence, induced the said Crux to forfeit his recognizance, and petitioned the legislature at Richmond to grant them whatever might be obtained by such forfeiture, upon which the legislature passed a bill, giving Jackson and Monroe one-half of what might be obtained from Crux. In March, eighteen hundred and sixty, James Crux, (one of the securities for Thomas Crux,) at the instigation of Jackson, Monroe and others, paid into court one thousand dollars, with the understanding that the whole suit should be settled thereby. At the March term of eighteen hundred and sixty-one, (notwithstanding the above arrangement,) the case was taken up, and judgment rendered against Crux and his securities for the sum of twenty-five hundred dollars. All the officers of the said court being secessionists, and having left home, are supposed now to be under the protection of the so-called confederate government.

Release.

Therefore, be it enacted by the General Assembly of Virginia, That the said Thomas Crux and his securities, be and are hereby released from all pains, penalties and costs, arising from the said prosecution, and may plead this act in bar of the same.

This act shall be in force from its passage.

Commencement.

CHAP. 9.—An ACT transferring a portion of the Maryland and Ohio Turnpike to the County Court of Marion.

Passed May 14, 1862.

A portion of the Maryland and Ohio turnpike placed under the supervision and control of the county court of Marion county.

1. Be it enacted by the General Assembly of Virginia, That so much of the Maryland and Ohio Turnpike as runs between the town of Mannington, in the county of Marion, and to the point at which the said pike intersects the Wheeling and Fairmont Turnpike, near

County court authorized to lay it off into precincts and place the same under supervisors. Fairmont, be placed, and the same is hereby placed under the supervision and control of the county court of the said county of Marion. And the court of said county is thereby empowered to lay off the said pike into precincts and to place the same under supervisors, and the said pike when so precincted and placed under supervisors, shall be worked and controlled as county roads are worked and controlled by law, To be worked and controlled as county roads. Proviso. provided that nothing herein contained shall be construed so as to transfer any interest which the state may have in the said pike.

Commencement. 2. This act shall be in force from its passage.

Chap. 10.—An ACT making certain appropriations.

Passed May 14, 1862.

1. Be it enacted by the General Assembly, That there shall be and is hereby appropriated out of any money in the treasury not otherwise appropriated:—

Appropriation to pay expenses of general assembly—extra session—four thousand dollars. To expenses of the general assembly for the extra session, commencing May sixth, eighteen hundred and sixty-two, four thousand dollars.

Pay and expenses of patrols and state volunteers for services prior to Feb. 13, 1862—three thousand dollars. To pay expenses of patrols and state volunteers for services rendered prior to February thirteenth, eighteen hundred and sixty-two, three thousand dollars.

To agent of executive—three hundred dollars. To Thomas Hornbrook as agent for the executive, three hundred dollars.

Additional appropriation to civil contingent fund—ten thousand dollars. To the civil contingent fund, in addition to appropriations made heretofore, ten thousand dollars.

To lunatic and other asylums of the state—ten thousand dollars. And to the lunatic and other asylums of this state, ten thousand dollars.

Commencement. 2. This act shall be in force from its passage.

Chap. 11.—An ACT transferring certain proceedings under an attachment or attachments to the Circuit Court of Preston county.

Passed May 14, 1862.

Preamble. Whereas, One Angus W. McDonald, of the county of Hampshire, sued out of the circuit superior court of Hardy and Hampshire, or one of them, sometime about the year eighteen hundred and forty-seven, a writ in the nature of a foreign attachment which was levied on certain lands belonging to the Potomac and Alleghany coal and iron manufacturing company, lying and being situated in the counties of Hardy and Hampshire, amounting to about sixteen thousand acres.

And whereas, the said proceedings were still pending and undetermined under the said attachment or attachments at the time of the outbreak of the present rebellion, and all the books, papers, records and proceedings of the courts of the counties of Hardy and Hampshire, have been removed or destroyed, and the said counties are destitute of courts.

Proceedings under certain attachments transferred to circuit court of Preston county. Said court authorized to take such action and make such order or orders as justice and the rules of equity may require.

Therefore, be it enacted by the General Assembly of Virginia, That all proceedings under the said attachment or attachments, in which Angus W. McDonald is plaintiff, and the Potomac and Alleghany Coal and Iron Manufacturing company are defendants, are hereby transferred to the circuit court of Preston county, which is hereby authorized and empowered to take such action and make such order or orders, in reference to the said case, as justice and the rules of equity may require.

2. This act shall be in force from its passage. Commencement.

CHAP. 12.—An ACT to amend and re-enact the Act entitled an Act, prescribing oaths in certain cases and providing for the registration of the same.

Passed May 14, 1862.

What persons required to take oath.

1. Be it enacted by the General Assembly, That before any person shall hereafter receive any license to practice any profession or to conduct any business or calling for which license is now required by existing laws, he shall take and subscribe the following oath, before a commissioner of the revenue or any person authorized to administer the same: Oath. "I solemnly swear that I will support the constitution of the United States, and the laws made in pursuance thereof, as the supreme law of the land, anything in the constitution and laws of the State of Virginia, or in the ordinance of the convention, which assembled at Richmond on the thirteenth February, eighteen hundred and sixty-one, to the contrary notwithstanding, and that I will uphold and defend the government of Virginia, as vindicated and restored by the convention, which assembled at Wheeling on the eleventh day of June, eighteen hundred and sixty-one." Persons refusing to take and subscribe said oath not to receive license. If the applicant for such license shall refuse to take and subscribe said oath, the court or commissioner of the revenue, council or board of trustees of a city or town to whom such application has been made, shall refuse to grant the same.

Ministers of the Gospel and all persons authorized to solemnize the rites of matrimony to take and subscribe the oath. No court to authorize any min-

2. It shall be the duty of ministers of the gospel and all other persons authorized under existing laws to solemnize the rites of matrimony, to take and subscribe the oath set forth in the preceding section. Such ministers or other person, if resident within a county where the courts have been organized, under the ordinance passed by

ister of the Gospel or other person to solemnize the rites of matrimony until and unless they have taken said oath.

the convention, which assembled at Wheeling on the eleventh June, eighteen hundred and sixty-one, entitled, an ordinance for the reorganization of the State government, shall take and subscribe the said oath within sixty days after the passage of this act, and if resident in other counties, within sixty days after the courts shall have been organized in each of said counties respectively. No court shall authorize any minister of the gospel or other person, to solemnize the rites of matrimony, until and unless such minister or other person shall have taken and subscribed the said oath set forth in the preceding section. Any minister of the gospel or other person, who shall solemnize the rites of matrimony, without having taken and subscribed the said oath, after being required so to do, by the terms of the section, shall, at the discretion of the jury, be fined not less than ten, nor more than one hundred dollars. Provided, however, that no marriage shall be deemed invalid or void, which was solemnized in violation of this act.

Penalty for solemnizing rits of matrimony without having taken said oath.

Proviso.

Duty of president directors, clerks. of banks. keepers of toll bridges and ferries, toll-collectors of roads, officers and clerks of corporations, companies and associations to take and subscribe the said oath within sixty days after the passage of this act.

3. It shall be the duty of the president, directors and clerks of banks; the keepers of toll-bridges snd ferries, toll-collectors of roads, and officers and clerks of corporations; companies, associations and institutions; the deputy clerks of county, corporation and circuit courts; commissioners of the several courts or personal representatives and notaries public; and the clerks or agents of every person practicing a profession or conducting any business or calling for which a license is now required by existing laws, to take and subscribe the said oath set forth in the first section within sixty days after the passage of this act, in those counties where the courts have been organized under the said ordinance before mentioned, and in other counties within sixty days after said courts shall have been organized in said counties respectively. Any person in this section mentioned, who shall continue in the discharge of his office or employment, in violation of this section, shall, at the discretion of a jury, be fined not less than one hundred nor more than five thousand dollars. It shall be the duty of all courts of justice, to require all grand and petit jurors, veniremen and special jurors, to take the oath set forth in the first section of this act.

Penalty for violating this section.

Duties of clerks of courts.

4. It shall be the duty of the clerks of the several county and corporation courts, to procure, at the expense of the several counties and corporations of the State, printed copies of the oath aforesaid, for the use of the commissioners of the revenue, and other persons authorized to administer the same, in their respective counties and corporations. It shall be the duty of said clerks, and other persons authorized to administer said oath, to require each person to whom the same may be administered, to subscribe a printed copy thereof, and shall further endorse thereon, the name, age, occupation and residence of the person taking the said oath. When the person taking said oath shall be unable to write, his mark shall be attested by a witness, other than the officer administering the said oath. The said printed copies shall be filed with the clerk of the county or corpora-

tion, within fifteen days after the same shall have been so subscribed, to be by him preserved in his office. It shall further be the duty of the clerk, to record in a book, to be kept in his office, the name, residence, age and occupation of each person taking and subscribing the said oath, together with the name of the officer before whom, and the time when the same was so taken and subscribed. Any clerk or other person, failing to comply with the provisions of this section, shall be subject to a fine of not less than fifty nor more than one thousand dollars.

Further duties of clerks.

Penalty for failing to comply with provisions of this section.

5. If any person shall voluntarily take the oath set forth in the first section of this act, before any court, military officer or any person authorized by existing laws to administer an oath; or if any person under arrest, whether by civil or military authority, shall, with the intent of effecting his release, or as a condition thereto, take and subscribe the said oath and shall thereafter be lawfully convicted of having violated the same, every such person shall be deemed guilty of a misdemeanor, and shall, at the discretion of the jury, be fined not less than one hundred nor more than five thousand dollars, and be confined in the county jail not exceeding twelve months, and shall moreover, be subject to all the penalties mentioned in the third section of chapter one hundred and ninety-four of the code of eighteen hundred and sixty.

Any person voluntarily taking said oath, and subsequently violating the same to be deemed guilty of a misdemeanor and be subject to a fine and moreover be subject to all the penalties mentioned in the 3rd section of chapter 194 of the code of 1860.

6. Every person who shall practice any profession or conduct any business or calling, for which a license is now required by law, without having obtained a license therefor or who shall continue in his office or employment, without having taken the said oath, according to the terms of this act shall be deemed a suspicious person, within the intent and meaning of the sixth and seventh sections of chapter seventeen of the code of eighteen hundred and sixty, and the ordinance of the convention which assembled at Wheeling on the eleventh day of June, eighteen hundred and sixty-one, entitled "an ordinance to authorize the apprehending of suspicious persons in time of war," passed June nineteenth, eighteen hundred and sixty-one. The governor may, at his discretion, upon affidavit of the fact, cause every such person to be apprehended and secured, by warrant under the less seal of the commonwealth, and held in custody until such person shall enter into a bond, in such penalty as shall be named in said warrant with one or more securities to be approved by the justice of the peace or judge of a circuit court before whom said bond shall be acknowledged, conditioned that he shall keep the peace and be of good behaviour for the space of twelve months thereafter, that he will not practice any profession or conduct any business or calling for which a license is required by law, or assume any office or employment mentioned in the third section of this act without having first taken and subscribed the oath aforesaid, and that he will not in any manner directly or indirectly give aid or comfort to the so-called Confederate States of America, or to the enemies of the United States of America. Such warrant may be directed to any sheriff or other officer, civil or military, and shall be executed according to the terms

Who shall be deemed suspicious persons.

Upon affidavit may be apprehended and held until approved bond and security be given.

Condition of bond.

How warrant may be directed.

How executed.

thereof by such officer who shall have all the powers necessary for the purpose either in or out of his county or corporation. The bond mentioned in this section may be sealed and acknowledged before a justice of the peace or judge of a circuit court, and returned with the warrant to the secretary of the commonwealth, to be by him filed in his office.

Where bond to be returned.

Aliens domiciled within this State subject to any foreign power at peace with the U. S. not required to take the oath.

7. Nothing in this act contained, shall be so construed as to require the said oath set forth in the first section, to be taken or subscribed by an alien, subject to any foreign power at peace with the United States of America, domiciled within this State, who shall in all other respects comply with the license laws of this State. Nor shall anything in this act contained be so construed as to require the said oath to be taken or subscribed by a citizen of another State of the United States, temporarily resident within this State, who shall in lieu thereof take and subscribe the following oath: "I solemnly swear that I will support the constitution of the United States, and the laws made in pursuance thereof, as the supreme law of the land," and who shall, in all other respects comply with the license law of this State.

Form of oath to be taken by a citizen of another State temporarily resident in this State.

The act entitled "an act prescribing oaths in certain cases, and providing for the registration of the same," passed Feb. 10, 1852, repealed. Construction.

8. That the act entitled "an act prescribing oaths in certain cases, and providing for the registration of the same," passed February tenth, eighteen hundred and sixty-two, shall be and the same is hereby repealed; but nothing in this section shall be so construed as to release any penalties incurred under the act hereby repealed

Commencement.

9. This act shall be in force from its passage.

CHAP. 13.—An ACT to repeal the 9th, 10th, 11th and 18th Sections of Chapter 212 of the Code of Virginia.

Passed May 14, 1862.

Sections 9, 10, 11 and 18 of chapter 212 of the code repealed.

1. Be it enacted by the General Assembly of Virginia, That the nineth, tenth, eleventh and eighteenth sections of chapter two hundred and twelve of the code of Virginia be, and the same are hereby repealed.

Commencement.

2. This act shall be in force from its passage.

CHAP. 14.—An ACT for the relief of the Banks of the Commonwealth.

Passed May 14, 1862.

1. Be it enacted by the General Assembly, That so much of all or any acts as may subject any bank incorporated by the laws of this commonwealth, now in operation, to the forfeiture of its charter, or to any other penalty, for failing or refusing to redeem its notes or debts in specie, shall be and the same are hereby suspended until the first day of January, eighteen hundred and sixty-four. **Certain acts suspended until the 1st of Jan. 1864.**

2. And if any such bank shall have forfeited its charter by failing or refusing to pay in specie any note or other debt due from such bank, such forfeiture is hereby remitted and the charter of such bank with all the rights and powers thereby conferred, shall remain in full force and effect, as if such failure or refusal had not occurred. Provided that nothing herein contained shall prevent the recovery of the amount of any note or debt due from such bank, with interest thereon, at the rate of six per cent per annum, by the ordinary process of law. **Forfeiture remitted.** **Proviso.**

3. This act shall be in force from its passage. **Commencement.**

CHAP. 15.—An ACT making an appropriation to the proposed State of West Virginia.

Passed May 14, 1862.

1. Be it enacted by the General Assembly, That there shall be and is hereby appropriated out of any money in the treasury, not otherwise appropriated, to the state of West Virginia, when the same shall become one of the states of the Union, one hundred thousand dollars. **Appropriation to the new state of West Virginia.**

2. Be it further enacted, That so much of the public revenue due the state of Virginia from the counties embraced within the boundary of the proposed state of West Virginia, including bank dividends and all money from any source whatsoever, due the state, as shall not have been paid into the treasury of the state at the time of the admission of the proposed state of West Virginia as one of the United States, shall be the property of the said state of West Virginia, and the several sheriffs and other collectors of the public revenue, and all persons holding money due the state within the said boundary, shall pay the same into the treasury of the state of West Virginia. All of the appropriation made by this act shall be charged to the state of West Virginia, in the settlement between the states of Virginia and West Virginia. **What shall be the property of the proposed state of West Virginia.** **Sheriffs and collectors to pay into the treasury of said state of West Virginia.**

3. This act shall be in force from its passage. **Commencement.**

CHAP. 16.—An ACT declaring the Ohio River and its banks a lawful fence, in the counties of Wood and Marshall.

Passed May 14, 1862.

The Ohio river and its banks a lawful fence in counties Wood and Marshall.

Exceptions.

1. Be it enacted by the General Assembly, That the Ohio river and its banks be, and is hereby declared a lawful fence, in the counties of Wood and Marshall; excepting, always, such parts of the banks thereof as shall be used for highways.

Commencement.

2. This act shall be in force from its passage.

CHAP. 17.—An ACT prescribing an oath in certain cases.

Passed May 15, 1862.

Suitors and their agents and attorneys before instituting a suit, required to take the oath prescribed by the convention which assembled in Wheeling, June 11, 1861.

Where said oath is to be filed.

When oath once taken and filed, sufficient for the parties in bringing other suits in same county.

1. Be it enacted by the General Assembly of Virginia, That before any person or persons, or by their agents or attorneys residing within the commonwealth of Virginia, are entitled to sue out any civil process in any of the courts of record in this state, or before a justice of the peace, such person or persons shall first take and subscribe the oath prescribed by the convention which assembled in Wheeling on the eleventh day of June, eighteen hundred and sixty-one, to support the constitution of the United States, and the reorganized government of Virginia, and file the same in the clerk's office of the county court of the county wherein said person or persons proposes to sue out such process, or if before a justice of the peace, the oath so taken and subscribed may be filed before the same, and said justice of the peace shall file such oath taken and subscribed in the clerk's office of said county court, and when once taken and so filed shall be sufficient for the same parties in bringing other suits in the same county.

Commencement.

2. This act shall be in force from its passage.

CHAP. 18.—An ACT to amend and re-enact the act passed February 8th, 1862, entitled "An act to reorganize the Kanawha Board."

Passed May 15, 1862.

Board of public works annually to appoint five directors for the Kanawha Board, until individuals holding stock hold a meeting in the jurisdiction of this assembly to elect directors.

Terms of office.

1. Be it enacted by the General Assembly of Virginia, That until the individuals holding stock in the Kanawha river improvement shall hold a meeting within the jurisdiction of this assembly, for the election of directors, the board of public works shall annually appoint five directors for the Kanawha Board, with power to sue and be sued, as a body politic and corporate, who shall have control and supervision of the Kanawha river and road, according to the provisions of the act providing more effectual means for the improvement of the Kanawha river, passed February fifteenth, eighteen hundred and fifty-eight, and an act to amend the charter of the James River and Kanawha Company, passed March twenty-third, eighteen hundred and sixty, so far as the same may be consistent with the provisions of this act. The said board of directors shall hold their offices for one

year, or until their successors are appointed, and shall have all the powers pertaining to the said board, as fully as if they had been appointed according to the provisions of the said act, passed February fifteenth, eighteen hundred and fifty-eight.

2. The board of public works shall appoint a collector of tolls for each of the two collection districts on the Kanawha river, with salaries to be fixed by the board aforesaid. That the said collectors shall give bond and security to the Kanawha board, in such sum, in each case, as the said board shall prescribe, for the faithful performance of the duties of their respective offices, as well as to account for the tolls collected by them respectively. The said collectors shall collect all tolls, which shall have accrued on the river in their respective districts prior to, and since the twenty-fourth of May, eighteen hundred and sixty-one, to the time of their qualification, and for this purpose may require manifests of the subjects of toll, from the parties who may owe them, to be made out on oath; and may also require such manifests of all steam boats, and other vessels navigating and carrying freight on the Kanawha river; and the said collectors shall make full report of all tolls collected, and from whom, and account quarterly to the board aforesaid for all monies collected by them and pay the same promptly to the said board or its order.

Duty of board of public works to appoint a collector of tolls for each of the two collection districts on the Kanawha river.

Salaries how fixed.

Collectors to give bond and security

Duties of collectors.

3. And the said Kanawha board is hereby authorized and required to prosecute the improvement of the Kanawha river by contract, according to the provisions of the aforesaid act, passed March twenty-third, eighteen hundred and sixty, or by appropriating the surplus tolls accruing on the river and road, as they may deem most expedient; provided that nothing in this act shall be so construed as to authorize the new board to make any contracts binding on the commonwealth for the payment of money or the issuing of bonds, to supply any deficiency, not heretofore issued under the provisions of the aforesaid act, passed March twenty-third eighteen hundred and sixty.

Duties of Kanawha board.

Proviso.

4. And the said Kanawha board shall also have full control over the Kanawha road, and shall appoint a general superintendent, who shall have supervision of both the Kanawha river and road, whose duty it shall be to collect from the gate-keepers, quarterly, the net proceeds of the tolls collected by said gate-keepers, and keep such road in repair by the use of said tolls, and pay over the residue to the said board for the river improvement; also to take charge of and secure for the use of the board, all the boats, tools and other property now on the river, which was procured by the late Kanawha board, in and for the improvement of the Kanawha river and road; and manage and superintend the improvement of the river, subject to the control of said board, and shall make quarterly returns to said board of his collections and disbursements, and shall receive for his services annually, a sum not exceeding twelve hundred dollars.

Kanawha board to have full control of Kanawha road.

To appoint a general superintendent.

Extent of authority.

Annual report.

5. The said board shall, annually, make full report to the board of public works, of all their acts and doings pertaining to said road and river improvement.

All former laws in conflict with this act repealed.

6. All former laws, in conflict with the provisions of this act, are hereby repealed.

Commencement.

7. This act shall be in force from its passage.

CHAP. 19.—An ACT changing the place of voting in the counties of Fairfax and Preston.

Passed May 15, 1862.

The election precinct at Drainsville in the county of Fairfax discontinued.

Lawful to open a poll at Borden's house.

1. Be it enacted by the General Assembly of Virginia, That the election precinct at Drainsville, in the county of Fairfax be discontinued, and that in lieu thereof, it shall be lawful to open a poll at the house of ——— Borden, at Springvale, in the said county of Fairfax, which shall hereafter be a regular place of voting in said county, in place of Drainsville.

Election precinct at Springdale, in the county of Preston discontinued.

Lawful to open a poll at Robert Gordon's house, in said county.

2. Be it further enacted, that the election precinct held at the house of Jonathan Huddleson, at a place called Springdale, in the county of Preston, be discontinued, and that in lieu thereof, it shall be lawful to open a poll at the house of Robert Gordon, in the said county, which shall hereafter be a regular place of voting, in the county of Preston, in place of Jonathan Huddleson's, at Springdale.

Commencement.

3. This act shall be in force from its passage.

CHAP. 20.—An ACT repealing the Seventeenth Section of Chapter Fifteen of the Code of 1860.

Passed May 15, 1862.

Section 17 of chapter 15 of the code repealed.

1. Be it enacted by the General Assembly, That the seventeenth section of chapter fifteen of the code of eighteen hundred and sixty, be and is hereby repealed.

Commencement.

2. This act shall be in force from its passage.

CHAP. 21.—An ACT to amend and re-enact the Frst Section of Chapter Fifty-eight of the Code of Virginia.

Passed May 15, 1862.

Section 1 of chapter 58 of the code amended and re-enacted.

1. Be it enacted by the General Assembly, That the first section of chapter fifty-eight of the code of Virginia, (second edition) be amended and re-enacted so as to read as follows:

"There shall be nine directors of a bank, and seven for each of its branches—whereof, five of the former and four for each branch, shall be elected by the stockholders, other than the state, in general meeting, and the residue shall be appointed by the governor, on behalf of the state: Provided, however, that five of the nine directors, for each parent bank, and four of the seven directors for each of the branches, shall hereafter be appointed by the governor on behalf of the state, for the Bank of Virginia, the Farmers' Bank of Virginia, the Exchange Bank of Virginia, and the Bank of the Valley, in Virginia. And provided further, that where, of the stock held in any bank by the commonwealth, on the fifteenth day of March, eighteen hundred and fifty-six, whether standing in the name of the commonwealth or the board of public works, or of any other department of government, except the literary fund, one-fourth the part has been sold since that day, only three directors in said parent bank and two for each of its branches, shall be appointed on behalf of the state. And where one-half of said stock has been sold since that day, only two directors in said parent bank, and one for each of its branches, shall be appointed on behalf of the state. And where three-fourths of said stock has been sold since that day, only one dirictor of the parent bank and none in the branches, shall be appointed on behalf of the state. And where all of said stock has been sold since the said fifteenth day of March, eighteen hundred and fifty-six, neither proxies nor directors in such bank, shall be appointed on behalf of the state."

Number of directors for a bank and its branches.
Number to be elected by stockholders.
Governor authorized to appoint residue.
Proviso.
Further proviso.

No officer or director of a bank, shall hereafter vote as the proxy of a stockholder in any election of directors or officers of a bank, nor shall any proxy be valid which shall have been executed sixty days before the time of election.

Officer or director not to vote as proxy.

The governor may, at any time, appoint commissioners to examine the papers and officers of a bank, to ascertain whether the laws, applicable to such bank, have been strictly observed.

Governor may appoint commissioners.

2. This act shall be in force from its passage.

Commencement.

JOINT RESOLUTIONS.

No. 1.—Resolution to elect Brigadier Generals for the Sixth, Twentieth and Twenty-first Brigades of Virginia Militia.

Passed May 8, 1862.

Resolved, (With the consent of the House of Delegates,) That the General Assembly of Virginia will, on Friday, the nineth inst., by joint vote of both houses, proceed to the election of Brigadier Generals for the sixth, twentieth and twenty-first Brigades of Virginia Militia. The question being on concurring with the same, it was determined in the affirmative.

No. 2.—Resolution authorizing and directing the Governor to appoint three Commissioners to report the true state and condition of the Branch of the Exchange Bank of Virginia, at Alexandria, and the Branch of the Farmers' Bank at Alexandria.

Passed May 8, 1862.

Resolved by the General Assembly of Virginia, That the Governor be and he is hereby authorized and directed to appoint three commissioners, whose duty it shall be to inquire and report to him, the true state and condition of the Branch of the Exchange Bank of Virginia, at Alexandria, and the Branch of the Farmers' Bank at Alexandria.

No. 3.—Resolution requesting Auditor to report the amount of funds in the Treasury liable to be appropriated for school purposes.

Passed May 12, 1862.

Resolved by the General Assembly, That the Auditor of Public Accounts be requested to report against Tuesday next, to the General Assembly, the amount of funds in the treasury liable to be appropriated for school purposes.

No. 4.—Resolution to meet in the city of Richmond.

Passed May 12, 1862.

Resolved by the General Assembly of Virginia, That when this Legislature adjourn, it adjourn to meet in the city of Richmond, if the Governor think it safe and prudent, and that the general good of the State may be promoted thereby.

No. 5.—Resolution amending the Ordinance passed June 19th, 1861, providing for the apprehension of suspicious persons.

Passed May 13, 1862.

Resolved by the General Assembly of Virginia, That an Ordinance passed June nineteenth, eighteen hundred and sixty-one, by the convention that assembled at the city of Wheeling, on the eleventh day of June, eighteen hundred and sixty-one, providing for the apprehension of suspicious persons, be amended in the seventh section so as to read as follows: The powers vested in the Governor by this ordinance shall be exercised only upon satisfactory evidence that an offense has been committed.

No. 6.—Resolution of thanks to the First Regiment of Virginia Infantry.

Passed May 13, 1862.

Resolved by the General Assembly of Virginia, That the thanks of the General Assembly, be tendered to the officers, non-commissioned officers and privates of the First Regiment Virginia Infantry, in the United States service, for their gallantry in the late battle of Winchester, and that the Executive of the State be requested to present Col. Jos. Thoburn a flag, to be the property of the regiment, on which shall be inscribed, "Winchester," as a testimonial of approbation from loyal Virginia.

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ACTS

OF THE

GENERAL ASSEMBLY,

OF THE

STATE OF VIRGINIA;

PASSED AT THE

EXTRA SESSION,

Commenced December 4, 1862, in the 87th year
of the Commonwealth.

WHEELING, VIRGINIA:
1863.

[20]

ACTS OF THE GENERAL ASSEMBLY;

PASSED AT THE EXTRA SESSION COMMENCED DEC. 4, 1862.

CHAP. 1—An ACT for the relief of John Slack, Jr., Sheriff elect of Kanawha County.

Passed December 13, 1862.

1. Be it enacted by the General Assembly, That John Slack, jr., sheriff elect of Kanawha county, be allowed until the twentieth day of February, one thousand eight hundred and sixty-three, to give bond and qualify as sheriff of said county.

John Slack, jr., sheriff elect of Kanawha county, allowed until the 20th day of February, 1863, to give bond and qualify as sheriff of said county.

2. This act shall be in force from its passage.

Commencement.

CHAP. 2.—An ACT to amend the 5th section of an act entitled an act to incorporate the City of Wheeling, in Ohio County.

Passed December 19, 1862.

1. Be it enacted by the General Assembly, That section fifth of an act entitled "An act to incorporate the city of Wheeling, in Ohio county, passed March eleventh, eighteen hundred and thirty-six," be amended and re-enacted so as to read as follows, viz: At all elections which shall be held by voters of the said city, for the corporate authorities thereof, the following persons shall be entitled to vote, viz: first, every white male citizen of the state of the age of twenty-one years or upwards, who for at least one year preceding the election, shall have been a house-keeper or the head of a family in said city; second, every person qualified to vote for members of the general assembly of the state, who shall have been a resident of said city for at least one year preceding the election; and third, every white male citizen of the state of the age of twenty-one years or upwards, who at the time of the election shall be the *bona fide* owner of any freehold estate within said city of the value of five hundred dollars: provided always, that no person although in other respects qualified, shall be entitled to vote at any such election, if he shall fail to pay the capitation tax, lawfully assessed or levied upon him for the benefit of said city during the year preceding the election.

Section five of an act to incorporate the city of Wheeling, in Ohio county, passed March 11, 1836, amended and re-enacted.

Who entitled to vote at city elections for the corporate authorities.

Proviso.

2. This act shall be in force from and after its passage.

Commencement.

CHAP. 3.—An ACT extending the boundary line of the Corporation of the Town of Buckhannon.

Passed December 19, 1862.

The boundary of the town of Buckhannon, in the county of Upshur, extended.

1. Be it enacted by the General Assembly, That the boundary of the corporation of the town of Buckhannon, in the county of Upshur, be so extended as to include E. J. Colerider within the boundary, as follows: Beginning on the line of said E. J. Colerider and John L. Smith's land, known in the act passed March twelfth, eighteen hundred and fifty-two, incorporating the said town of Buckhannon, as a tributary of Jawbone Run, thence with the said line straight across said Colerider's field to H. F. Westfall's line, thence with said line to the Buckhannon and French Creek road, thence with said road to the foot of Trimble's Hill to the old corporation line.

Commencement.

2. This act shall be in force from its passage.

CHAP. 4.—An ACT to incorporate the Franklin Insurance Company of Wheeling.

Passed December 19, 1862.

Persons incorporated.

Name and style of company. With what rights, powers and privileges invested. What rules, regulations and restrictions subjected to.

1. Be it enacted by the General Assembly of Virginia, That John R. Miller, George Mendel, George K. Wheat, John Zoeckler, Nathaniel C. Arthur, George W. Franzheim, Chester D. Knox, Samuel Harper and James N. Vance, together with such other persons as may hereafter be associated with them, and their successors, the holders of the capital stock hereinafter authorized to be raised, shall be, and they are hereby constituted and made a body politic and corporate, under the name and style of the "Franklin Insurance Company," and by that name and style are invested with all the rights, powers and privileges conferred, and made subject to all the rules, regulations and restrictions, imposed by the code of Virginia, applicable to such corporations, and not inconsistent with the provisions of this act.

Capital stock.

Value of shares.

2. The capital stock of said company shall not be less than fifty thousand dollars, nor more than five hundred thousand dollars, to be divided into shares of the par value of one hundred dollars each.

Subjects of insurance.

Endowments.

Reversionary payments.

May guarantee payment of promissory notes.

May be insured.

3. The said company shall have authority and power to make insurance against all marine risks, and against any damage or loss by fire, or by any other liability, casualty or hazard, upon any and every kind of property, real, personal or mixed, to make insurance on lives; to grant annuities; to receive endowments; to contract for reversionary payments; to guarantee the payment of prommissory notes, bills of exchange and other evidences of debt; to lend money on bottomry and respondentia; to cause themselves to be insured against all risks they may have in any property or lives in their own right, or in virtue of any bonds or advances, or of any policy or contract of insurance.

4. The said company shall have power and authority to invest its capital stock, or other funds of the company, in bank or other stocks, in the purchase of bonds issued by this state, the United States, or of any one of the United States, or the bonds of any incorporated company; to lend money upon personal or real security; to discount notes and bills of exchange, and receive the interest in advance, or at the rate of one-half per centum for thirty days; to pay interest upon money deposited with them and give certificates therefor.

May invest its funds in stocks and purchase of bonds of this state, of the United States, or any incorporated company.

May loan money.

May discount notes or bills of exchange.

5. The secretary of the said company shall be a competent witness in all suits for or against said company, in all the courts of this commonwealth: provided he shall not own exceeding twenty-five shares of the capital stock of said company.

Secretary a competent witness.

Proviso.

6. The said capital stock shall be payable by each subscriber, at such time or times as it may be called for by the president and directors of the company, and in such proportions as they may deem necessary, due notice of every such call being given by advertisement published in some newspaper printed in the city of Wheeling; each subscriber, when required so to do by the said president and directors, shall give bond with good and approved personal security in a penalty equal to the par value of the stocks held by such subscriber, payable to said company and conditioned for the prompt payment to said company on every such call thereafter made, until the par value of the stock held by such subscriber shall have been fully paid to said company; and if any subscriber shall fail to pay any call so made by the president and directors upon such share or shares owned or held by him, within twenty days after said call shall have been made under this section, then shall the amount of said call, with interest from the time the same was payable and five per centum damages thereon, be recovered by motion in the name of said company, upon not less than ten days notice, in any court of record in the county or place of residence of the subscriber. Judgment may in like manner be rendered in favor of said company against the obligor, or any, or either of them, of every bond taken under this section upon the like notice of such motion. The said president and directors shall from time to time carefully examine the said bonds, and may at any time require any shareholder to give a new bond with other and approved security in the same penalty and with the same condition as such original bond. Every subscriber or shareholder who shall fail to give the bond in this section mentioned, or a new bond in lieu of the one originally given, within twenty days after the same shall have been required by the president and directors, the whole balance which may be unpaid upon his stock by every such subscriber or shareholder, with interest thereon, may be recovered by motion as aforesaid; or such shares may, after twenty days notice in some newspaper published in the city of Wheeling, of the time and place of sale, be sold at public auction for ready money and transferred to the purchaser.

When the capital stock is payable.

Subscribers, when required, to give bond.

Condition of bond.

Subscribers failing to pay on any call made by the president and directors within 20 days after said call, then the amount of said call with interest and 5 per cent damages may be recovered against him by motion.

Upon like notice judgment may be rendered in favor of said company against the obligor or any or either of them on every bond taken under this section.

Officers of the company. Number constituting a quorum. How directors are elected. Terms of office of president, vice president and directors. Vacancy, how filled.

7. The offices of said company shall be managed by a president and nine directors, any five of whom shall constitute a quorum. The directors shall be elected by ballot from amongst the stockholders in general meeting assembled, by a majority of the votes of said stockholders present in person or by proxy, according to a scale of voting to be hereinafter prescribed, and the directors thus chosen shall at their first meeting choose from amongst themselves or the stockholders at large a president and vice president. The said president, vice president and directors to continue in office until their successors shall have been duly elected. In case of a vacancy in the offices of president, vice president or directors, from any cause, the directors may elect others to supply their places for the remainder of the term for which they were chosen.

The president and directors to appoint secretary, &c. Compensation.

8. The president and directors of said company shall appoint a secretary and such other officers as may be necessary for the management of their business, and shall allow them suitable compensation for their services.

Agents.

9. The president and directors shall have power to appoint agents in any part of this state or elsewhere, at their discretion and during their pleasure. They may also take for the security of the company, from their officers or agents, such bond in such penalty and with such condition as they may prescribe.

President and directors may adopt rules, orders and by-laws.

10. The president and directors may adopt such rules, orders, or by-laws not inconsistent with this act or the laws of the land, as they may deem proper and necessary, for regulating and prescribing the duties and powers of the officers and the general management of the company.

Scale of voting.

Stockholders indebted to company not permitted to make transfer of stock or receive a dividend.

11. The scale of voting at all the meetings of the stockholders of the company, shall be one vote for every share of stock not exceeding twenty, one vote for every two shares over twenty, and not exceeding one hundred, and one vote for every four shares exceeding one hundred. Every stockholder not indebted to the company, may at pleasure by power of attorney or in person assign and transfer his stock in the company on the books of the same, or any part thereof, not being less than one share, but no stockholder indebted to the company shall be permitted to make a transfer of stock or receive a dividend until such debt is paid, or secured to be paid to the satisfaction of the president and directors.

Who authorized to act as commissioners. Notice.

12. Any three of the persons named in the first section of this act shall be authorized to act as commissioners for receiving subscriptions of stock and organizing the said company. They shall give at least ten days' notice of the time and place when, and the persons under whose superintendence subscriptions of stock will be received; the amount to be paid at the time of subscribing upon each share of stock, and may continue open such books of subscription, from day to day, or from time to time, at their pleasure, until the minimum amount of said stock shall have been subscribed. They shall also

appoint the time and place for the first meeting of the shareholders or subscribers. General meetings of the stockholders shall be thereafter held annually or oftener, as the directors may by order or by-law, prescribe.

13. The stockholders of the company shall not be liable for any loss, damage, or responsibility, other than the property they have in the capital and funds of the company, to the amount of the shares respectively held by them, and any profits arising upon them, not divided.

To what amount stockholders are responsible.

14. This company shall be located at the city of Wheeling in the county of Ohio, and State of Virginia, at which place their principal office shall be kept.

Location of company.

15. This act shall be in force from its passage, and is hereby made perpetual, reserving to the general assembly of Virginia, the power to alter, amend, or repeal it at pleasure.

Commencement. Perpetual. Reservation.

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CHAP. 5.—An ACT to appropriate the residuary fund under the last will and testament of Peter Curran, deceased, to Brooke Academy.

Passed December 20, 1862.

The residuary fund of the estate of Peter Curran, dec'd, appropriated to Brooke Academy. Executors of last will and testament of Peter Curran, dec'd, directed and required to pay all money or other property coming into their possession in the nature of a residuary fund, to Brooke Academy.

1. Be it enacted by the General Assembly of Virginia, That all the residuary fund of the estate of Peter Curran, late of Brooke county, deceased, under his last will and testament devised to the literary fund of Virginia, is hereby appropriated to Brooke Academy, in the county of Brooke, and the executors of said last will and testament, are hereby directed and required to pay to said Brooke Academy all the money or other property which may or shall come to their hands or possession as, or in the nature of a residuary fund of said estate, and which under, and according to the provisions of said will, is payable to the literary fund of Virginia.

2. That Brooke Academy shall have all the rights, liberties and powers relative to said residuary fund that the said literary fund of Virginia would have had, had this act not been passed, and to this end may sue for and recover the same, and by all due process of law and chancery, may enforce as discoveries and settlements of executorial accounts deemed necessary.

Brooke Academy to have all the rights, liberties and powers relative to said residuary fund that the literary fund of Virginia would have had, had this act not been passed.

3. That Brooke Academy shall have and is hereby invested with full power to sell and convey all the real estate, at present owned by it, and any deed for this purpose shall be sufficient, when signed and acknowledged by the president of the board of trustees of said Brooke Academy.

Authority to sue. Power to sell any real estate owned by it, granted to Brooke Academy.

4. That Adam Kuhn and Joseph C. Gist are hereby made and constituted as trustees of said Brooke Academy, in addition to the five trustees thereof, appointed by the act passed on the sixth day of February, eighteen hundred and sixty-two.

Additional trustees.

5. This act shall be in force from its passage.

Commencement.

CHAP. 6.—An ACT to amend and re-enact an act passed February 8, 1862, entitled an Act staying the collection of certain debts.

Passed December 20, 1862.

The act passed February 8, 1862, entitled an act staying the collection of certain debts amended and re-enacted.

1. Be it enacted by the General Assembly of Virginia, That the act passed February eighth, eighteen hundred and sixty-two, entitled an act staying the collection of certain debts, be amended and re-enacted so as to read as follows:

No writs of fieri facias, distress warrant, or other process to issue under any judgment decree heretofore rendered by any court of this commonwealth or justice of the peace.

Levy.

Property to be returned to owner.

Lien.

2. Be it enacted by the General Assembly of Virginia, That no writ of *fieri facias*, distress warrant, order, or other process, shall issue under any judgment or decree heretofore rendered by any court of record in this commonwealth, or justice of the peace, nor upon any judgment, nor under any decree that may hereafter be rendered by any such court or justice while this act shall remain in force, nor shall there be any sale under any deed of trust, heretofore executed, without the consent of all the parties thereto, nor under any decree or judgment now rendered or that may hereafter be rendered, until otherwise provided by law. And in any case where a levy has been made prior to the passage of this act, the property so levied upon shall be returned to the owner, and the judgment upon which the levy was made shall be a lien upon all the property, both personal and real of the debtor, and shall have priority over all other judgments against the personal property of such debtor. But an execution shall at the instance of the plaintiff or his agent, be issued and proceedings had thereunder, as if this act had not been passed, in any case where an affidavit has been filed with the clerk or justice, as the case may be, that the affiant believes that the defendant in such case is removing or intends to remove his effects out of the county where the judgment was rendered.

A lien on real and personal estate.

What included.

3. Be it further enacted, That any person may sue for any debt and maintain any action at law or in equity and proceed to judgment therein. And any judgment, execution, order, or decree, now issued or rendered, or that may hereafter be rendered, shall, in addition to the provisions of chapters one hundred and eighty-six and one hundred and eighty-eight of the code of eighteen hundred and sixty, constitute a lien on all the estate, both personal and real of the judgment debtor from and after the docketing of any such judgment, as provided for in the third and fourth sections of chapter one hundred and eighty-six of the code of Virginia. This provision shall include all judgments whether rendered by justices of the peace or courts of this commonwealth.

Exceptions.

4. Be it further enacted, That nothing herein contained shall be so construed as to interfere with or abridge the laws now in force in relation to attachments and actions of detinue and trover, nor in relation to actions of ejectment and unlawful entry and detainer, nor in relation to the prosecution of criminal offences and the collection of fines, taxes, licenses, county levies and all debts due the commonwealth, but the same may be proceeded in as now provided by law,

nor shall this act apply to liabilities on the part of sheriffs, constables or other public officers, either to the State, counties, corporations, or individuals, nor to debts contracted after the twenty-sixth day of July, eighteen hundred and sixty-one, nor to deeds of trust executed after the twenty-sixth day of July, eighteen hundred and sixty-one, but payments of and sales under the same, may be enforced and proceeded in as if this act had not been passed, nor shall the time during which this act is in force be computed in any case in which the statute of limitations may come in question.

5. This act shall be in force from its passage, but shall expire on the first day of February, eighteen hundred and sixty-three.

Commencement.
Expiration.

CHAP. 7.—An ACT changing the place of holding an election in the county of Preston.

Passed December 20, 1862.

1. Be it enacted by the General Assembly of Virginia, That the separate election heretofore authorized to be holden at the Nimes House in the eighth magisterial district, in Preston county, shall be, and the same is hereby discontinued, and in lieu thereof the election for said election precinct shall be holden at the house of William H. Brown in said district, at which election precinct all persons qualified by law to vote in said district may vote.

The separate election heretofore authorized to be holden at the Nimes House in the 8th magisterial district in Preston county discontinued.
The election for said district to be holden at the house of Wm. H. Brown in that district.

2. This act shall be in force from its passage.

Commencement.

CHAP. 8.—An ACT for the relief of Joseph Martiney, late Commissioner of the Revenue for Barbour county.

Passed December 23, 1862.

1. Be it enacted by the General Assembly, That the auditor be, and is hereby directed to issue his warrant in favor of Joseph Martiney, for the sum of one hundred and fifty dollars, to be paid out of any money in the treasury not otherwise appropriated, being the amount due to said Joseph Martiney from the State for services rendered by him as commissioner of the revenue of Barbour county, for the year eighteen hundred and sixty-one.

Auditor directed to issue his warrant in favor of Joseph Martiney for the sum of one hundred and fifty dollars, out of any money in the treasury not otherwise appropriated.

2. This act shall be in force from its passage.

CHAP. 9.—An ACT for the relief of J. W. Stout, late Commissioner of the Revenue for Pleasants county.

Passed January 9, 1863.

Auditor directed to issue his warrant in favor of J. W. Stout for the sum of one hundred and fifty dollars, to be paid out of any money in the treasury not otherwise appropriated.

1. Be it enacted by the General Assembly, That the auditor be directed to issue his warrant in favor of J. W. Stout, for the sum of one hundred and fifty dollars, to be paid out of money in the treasury not otherwise appropriated, being the amount due said Stout from the state for service rendered as commissioner of the revenue for the county of Pleasants for the year eighteen hundred and sixty-one.

Commencement.

2. This act shall be in force from its passage.

CHAP. 10.—An ACT concerning Stephen W. Downey.

Passed January 9, 1863.

Preamble.

Whereas, It appears to the General Assembly of Virginia, That the county court of Hampshire county, Virginia, has not been organized under the reorganized government of Virginia, and whereas, it appears that Stephen W. Downey, a resident of said county, is desirous of obtaining a certificate in accordance with the provisions of the first section of chapter one hundred and sixty-four of the code of Virginia, that he has been a resident of said county for one year next preceding, that he is a person of honest demeanor, and is over twenty-one years of age, and that he cannot obtain such certificate by reason of the disorganization of said county.

Any court of this commonwealth upon satisfactory evidence, authorized to grant Stephen W. Downey a certificate of age, residence and character.

1. Be it therefore enacted, That it shall be lawful for the county court of any county of this commonwealth, upon satisfactory evidence that the said Stephen W. Downey has resided in the said county of Hampshire for one year next preceding, that he is a person of honest demeanor, and is over twenty-one years of age, to grant him a certificate of the facts, and that such certificate, when so given, shall be as valid as if given in accordance with the provisions of section first of chapter one hundred and sixty-four of the code of Virginia.

Commencement.

2. This act shall be in force from its passage.

CHAP. 11.—An ACT in relation to Coterminous Coal Lands west of the Blue Ridge Mountains in Virginia.

Passed January 9, 1863.

No owner or tenant of land containing coal west of the Blue Ridge of mountains permitted to open, sink, dig, excavate or work in any coal mine or shaft, &c.

1. Be it enacted by the General Assembly, That no owner or tenant of any land containing coal west of the Blue Ridge of mountains, shall open or sink, or dig, excavate or work in any coal mine or shaft, on such land within five feet of the line dividing said land from that of another person or persons, without the consent, in writing, of

every person interested in or having title to such adjoining lands in possession, reversion, or remainder, or of the guardians of any such persons as may be infants. If any person shall violate this section, he shall forfeit five hundred dollars to any person who may sue for the same.

Penalty for violation of this section.

2. The owner, tenant or occupier of any land on which a coal mine is opened and worked, or his agent, shall permit any person interested in or having title to any land coterminous with that in which such coal mine is, to have ingress and egress with surveyors and assistants to explore and survey such mine at his own expense, and not oftener than once a month, for the purpose of ascertaining whether or not the preceding section has been violated. Every owner, tenant, occupant, or agent, who shall refuse such permission, exploration, or survey, shall forfeit twenty dollars for each refusal to the person so refused.

Persons whose land is coterminous, &c.

But not oftener than once a month.

Every owner, tenant, occupant or agent refusing &c.

3. Any justice of the county in which such mine is, before whom complaint of such refusal is made, may issue a summons to such owner, tenant, occupant, or agent, to answer such complaint. On the return of the summons executed, and proof that the complainant has right of entry, and that it has been refused without sufficient cause, the justice shall designate an early and convenient time for such entry to be made, and issue his warrant commanding the sheriff of the county to attend and prevent obstructions and impediments to such entry, exploration and survey. The cost of such summons, and a fee of three dollars to the sheriff executing the warrant, shall be paid by the person whose refusal caused the complaint. But if the justice dismiss the complaint, the costs shall be paid by the party making it.

Who authorized to issue summons and to whom. Upon proof of right of entry the justice to designate an early and convenient time for such entry, &c.

The cost of summons and a fee of three dollars to the sheriff executing the warrant, &c.

4. This act shall be in force from its passage.

Commencement.

CHAP. 12.—An ACT for the relief of Samuel P. Hildreth, Treasurer of the Savings Bank of Wheeling.

Passed January 10, 1863.

1. Be it enacted by the General Assembly of Virginia, That the auditor be, and is hereby directed to issue his warrant in favor of Samuel P. Hildreth, treasurer of the savings bank of Wheeling, for the sum of sixty-two dollars and twenty-seven cents, which sum was by him erroneously paid into the state treasury as a tax on dividends for the year eighteen hundred and sixty-one, the bank having been taxed upon its capital for the same year.

Auditor directed to issue his warrant in favor of Samuel P. Hildreth, treasurer of savings bank of Wheeling, for the sum of sixty-two dollars and twenty-seven cts.

2. This act shall be in force from its passage.

Commencement.

CHAP. 13.—An ACT authorizing the County Court of Marshall county to re-assess two hundred and six acres of land in Marshall county belonging to Spencer Biddle.

Passed January 12, 1863.

The county court of Marshall county authorized to re-assess two hundred and six acres of land situated in said county belonging to Spencer Biddle.

1. Be it enacted by the General Assembly, That the county court of Marshall county be, and is hereby authorized to re-assess two hundred and six acres of land situated in said county, and appearing on the commissioner's books as the property of Spencer Biddle: provided the state shall not be subject to any expenses incurred thereby.

Proviso.

Commencement.

2. This act shall be in force from its passage.

CHAP. 14.—An ACT changing the place of holding an Election in the county of Jackson.

Passed January 13, 1863.

The separate election heretofore authorized to be holden at the house of Wm. Slaven, in the fifth magisterial district of the county of Jackson, discontinued.

1. Be it enacted by the General Assembly, That the separate election heretofore authorized to be holden at the house of William Slaven in the fifth magisterial district of the county of Jackson, shall be, and the same is hereby discontinued, and in lieu thereof, the usual election for said fifth district, shall be holden at the school house near Noah Staats, in said district, at which election precinct all persons qualified by law to vote in said district may vote.

Commencement.

2. This act shall be in force from its passage.

CHAP. 15.—An ACT to authorize Charles H. Kimball, Trustee, to construct and maintain a Tram or Railroad from Franklin Furnace to the Baltimore and Ohio Railroad in the county of Preston.

Passed January 13, 1863.

Charles H. Kimball, trustee, authorized to locate and construct a tram road or railroad, from Franklin Furnace in Preston county to a point on the Baltimore and Ohio railroad at or near the mouth of Raccoon creek in the same county. The land for said road not to exceed thirty feet in width exclusive of slopes and embankments. Authorized to proceed as prescribed in 56th chapter of the code, to obtain the title to land.

1. Be it enacted by the General Assembly, That Charles H. Kimball, trustee, be and is hereby authorized to locate and construct a tram road or railroad from the Franklin Furnace in the county of Preston, to a point on the Baltimore and Ohio railroad at or near the mouth of Raccoon creek in the same county; the land for the said road not to exceed thirty feet in width exclusive of the slopes of cuts and embankments. And for the purpose of enabling the said Charles H. Kimball, trustee, to obtain the title for the land required for the said road and the materials from the land adjacent thereto, proper and necessary for its construction and repair, he, the said Charles H. Kimball, as such trustee, shall be and he is hereby authorized to take proceedings the same as are prescribed in the fifty-sixth chapter of the code of Virginia in relation to corporations generally.

May be amended or repealed by general assembly

2. This act may at any time hereafter, be amended or repealed by the General Assembly.

Commencement.

3. This act shall take effect from and after its passage.

CHAP. 16.—An ACT providing for the repeal of an Act passed February 13, 1862, entitled "An Act to provide for the extension of time for the Sheriffs of the Commonwealth to execute writs of *fieri facias* on certain judgments.

Passed January 14, 1863.

1. Be it enacted by the General Assembly of Virginia, That the act entitled "An act to provide for the extension of time for sheriffs of this commonwealth to execute writs of *fieri facias* on certain judgments," passed February thirteenth, eighteen hundred and sixty-two, be and the same is hereby repealed.

The act entitled An act to provide for the extension of time for sheriffs of this commonwealth to execute writs of fieri facias on certain judgments, passed February 13, 1862, repealed.

2. This act shall be in force from its passage.

Commencement.

CHAP. 17.—An ACT to declare that the Council of the city of Wheeling shall consist of two Boards or Branches.

Passed January 15, 1863.

1. Be it enacted by the General Assembly of Virginia, That the council of the city of Wheeling, after the next election of officers for said city, shall consist of two separate and distinct boards, with the powers, capacities, and jurisdiction, now by law vested in the council of said city; one of which boards or bodies shall be called the first branch of the council of the city of Wheeling, and the other of which boards shall be called the second branch of the council of said city; and that no tax shall be levied, no appropriation of money be made, no contract entered into, nor any ordinance, by-law, or order be made or enacted without the consent of both of said branches of said city council. But each branch shall be the judge of the election and qualification of its own members, and shall have power to make all needful and proper rules and regulations for the government of its own body, and for the convenient direction and dispatch of its affairs and business.

The council of the city of Wheeling to consist of two boards

One of the said boards to be called the first branch, and the other to be called the second branch.

When consent of both of said branches required.

Each branch to judge of the election and qualification of its own members.

To make all needful rules and regulations for the government of its own body.

2. Be it further enacted, That the board created by, and mentioned in the sixth section of the act of the general assembly, entitled "An act to incorporate the city of Wheeling, in Ohio county," passed March eleventh, eighteen hundred and thirty-six, shall constitute and be called the said second branch of the said city council, and shall be chosen and continue, as is now provided by law, with its existing capacity, power and functions, except in so far as the same are abridged, altered or modified by the provisions of this act.

Which board to be called the second branch.

Its capacity, power and functions unimpaired

Exception.

3. The first branch of said council shall consist of two members from each ward of the city, and shall be elected by the persons residing in the respective wards, qualified under existing laws to vote for mayor and members of council.

Of whom the first branch shall consist.

How elected.

Two citizens of members of the first branch to be elected at the first annual election after the passage of this act.

4. At the first annual election for city officers after the passage of this act, there shall be elected by the qualified voters in each ward, two citizens thereof, to be members of the said first branch of the said city council. The member receiving in each ward the greater number of votes, and otherwise qualified, shall continue in office for two years, and until his successor is qualified; and the other member of each ward, and otherwise qualified, shall continue in office one year, and until his successor is qualified, and thereafter annually there shall be chosen by the qualified voters of each ward, one member of the first branch aforesaid for each ward, who shall continue in office for two years, and until his successor is qualified.

One member of the first branch to be chosen annually thereafter from each ward.
Who eligible as member of the first branch.
Power to fill vacancies.
Power of removal.
Proviso.

5. No person shall be eligible as a member of the first branch, unless he be a citizen of the state, and shall have resided in said city at least three years preceding his election, and is a resident of the ward for which he is chosen. And the first branch, as well as the said other branch, shall have power to fill vacancies occurring in their own body by the appointment of a qualified person; and also to remove a member for misbehavior, provided two-thirds of the whole number of such members shall concur in such removal.

Who to preside at meetings of the first branch.
Chairman, pro tempore.
Salaries.

6. At all meetings of the first branch it shall be the duty of the mayor to preside, but in his absence the members present constituting a quorum may appoint from their own body a chairman, pro tempore, and they may adopt such rules and appoint such officers, including a clerk, as they may deem proper for the regulation of their proceedings and the convenient transaction of their business. But the salaries of the officers of each branch shall be ascertained and fixed by the council, as it is by this act created and defined.

Majority of the whole board necessary to constitute a quorum. A smaller number may adjourn from time to time and compel the attendance of absent members.

7. It shall require the presence of a majority of the whole number of each branch as fixed by law, to constitute a quorum for the transaction of business, but a smaller number may adjourn from time to time, and compel the attendance of absent members in such way as the council may have provided.

Who to preside in second branch.
Duty of presiding officer of second branch. President, pro tempore.

8. The second branch of said council shall appoint one of its own members to preside over its deliberations, who shall be called the president of the second branch of the city council, and it shall be his duty when present, to preside at all meetings thereof, but in his absence, it may appoint one of its own members to preside as president pro tempore.

When vacancy in office of mayor to be filled by president of second branch.
Exception.
When the mayor is temporarily absent, who may be permitted to act as mayor.

9. When the office of mayor of the said city is vacant, the president of the second branch shall be mayor of the city, until such vacancy is filled, except that he shall not preside at the meetings of the first branch; and when the mayor of the city is temporarily absent therefrom, the president of the second branch may, if the council shall so ordain, possess the powers and exercise the duties of mayor during the time the mayor may continue absent from the city.

10. All propositions involving an appropriation of money, shall originate in the second branch of said council, but the first branch may propose or concur with amendments, as in other propositions.

Propositions involving an appropriation of money, where to originate.

11. The council of said city, as hereby created, shall have full power to make, pass and execute any ordinance which may be necessary or proper, to carry into effect the true intent and meaning of this act.

Power of council in reference to this act.

12. This act shall be in force from and after its passage.

Commencement.

CHAP. 18.—An ACT to incorporate Logan Tribe No. 21 of the Improved Order of Red Men, in the City of Wheeling.

Passed January 17, 1863.

1. Be it enacted by the General Assembly, That Joseph F. Gachter, Frederick Rolf, William Wegman, Henry Schaffer, and August Hildebright, and such others as are now regularly associated with them, are hereby created a body politic and corporate, under the name and style of "Logan Tribe No. 21 of the Improved Order of Red Men," in the city of Wheeling and county of Ohio, and by that name shall have perpetual succession and a common seal, may sue and be sued, plead and be impleaded, and may purchase, sell and hold, to them and their successors, for the charitable and benevolent purpose of said Tribe, and no other, not exceeding one full lot of ground in the city of Wheeling, and not exceeding three acres of land within the county of Ohio; and also such personal property and moneys necessary for the purposes aforesaid.

Names of individuals incorporated.

Made a body politic and corporate.

Name and style of incorporation.

2. The said Tribe shall be authorized to make all needful laws and regulations for the management of their property, as a majority of said Tribe may prescribe.

Authorized to make all needful laws and regulations.

3. This act shall take effect from and after its passage, and may be altered, amended or repealed at the pleasure of the general assembly.

Commencement.

May be altered, amended or repealed.

CHAP. 19.—An ACT to amend the Charter of the Holliday's Cove Railroad Company.

Passed January 19, 1863.

1. Be it enacted by the General Assembly, That the Holliday's Cove Railroad Company, or its lessees, may locate, construct, furnish and work a branch railroad from their terminus on the eastern side of the Ohio river, through the town of Wellsburg, in Brooke county, to the city of Wheeling.

Permission given to.

2. Be it further enacted, That sections seven, eight, nine, ten, eleven, twelve and thirteen of "An act to incorporate the Holliday's Cove Railroad Company, passed March thirtieth, eighteen hundred

Sections repealed.

Proviso.

and sixty," be, and the same are hereby repealed: provided, however, that this act shall be of no effect until the Western Transportation Company of Pennsylvania, named in the eighth section of the act entitled "An act to incorporate the Wheeling Railroad Bridge Company, passed the third day of March, eighteen hundred and sixty," transfer and assign to Thomas Sweeney and Sobieski Brady, or the survivors of them, any and all right and interest it has in said bridge company, and in the capital stock thereof, and upon such transfer the said Western Transportation Company shall not be liable for any instalments upon said stock accruing thereafter.

Commencement.

2. This act shall be in force from its passage.

CHAP. 20.—An ACT changing the place of holding the election in the counties of Hardy and Monongalia.

Passed January 19, 1863.

Election heretofore held at Michaels, in Hardy county, abolished. To be held at the house now occupied by John W. Athey, in Greenland.

1. Be it enacted by the General Assembly of Virginia, That the election heretofore authorized by law to be held at Michaels in the sixth magisterial district in Hardy county, be, and the same is hereby abolished, and that in lieu thereof the election hereafter to be held in the sixth district, shall be held at the house now occupied by John W. Athey, in Greenland.

Election precinct in Monongalia county, discontinued. The election to be held at the house of James Arnett, of Arnettsville.

2. Be it further enacted, That the election precinct held in the county of Monongalia, be discontinued, and that in lieu thereof the regular place of voting for said precinct shall hereafter be held at the house of James Arnett in the town of Arnettsville.

Commencement.

3. This act shall be in force from its passage.

CHAP. 21.—An ACT establishing a place of voting at Rockford School House, in the third Magisterial District of Harrison County.

Passed January 19, 1863.

An election precinct established at Rockford School House in Harrison county.

1. Be it enacted by the General Assembly of Virginia, That an election precinct be, and the same is hereby established at Rockford school house, in the third magisterial district of Harrison county, and that said school house shall hereafter be a regular place of voting in said county in all elections required by law to be held in the counties of this commonwealth.

Commencement.

2. This act shall be in force from its passage.

CHAP. 22.—An ACT to authorize Charles B. Waggener, trustee, to sell certain property in Mason county.

Passed January 19, 1863.

Preamble.

Whereas, it is represented to the General Assembly, That one William B. Robbins executed three several trust deeds, granting certain lands in Mason county to Abner W. Hogg to secure the payment of several bonds, in said deeds described, to John McCullock, Moses Michael and John Hall, which deeds bear date respectively on the fifth day of August, one thousand eight hundred and fifty-three, the twenty-third day of May, one thousand eight hundred and fifty-three, and the twenty-fourth day of May, one thousand eight hundred and fifty-three, which bonds, although due and payable, remain unsatisfied; that the said Abner W. Hogg having become insane, Charles B. Waggener, by a decree of the circuit court of said county, at the spring term of the year one thousand eight hundred and sixty-one was appointed to act as trustee instead of the said Abner W. Hogg, and that he, the said Charles B. Waggener, by advertisement, as provided for in said deeds, gave public notice that he would sell the said property on the fourth Saturday of January, one thousand eight hundred and sixty-three; that the said William B. Robbins is not an inhabitant of this State, and that the said property consisting of mineral lands, with salt furnaces and coal-works erected thereon, is now in a state of decay and dilapidation, and rapidly depreciating in value; and that a sale of the same at an early day will be beneficial to both the debtor and creditors; therefore,

Charles B. Waggener authorized to sell certain property.

1. Be it enacted by the General Assembly of Virginia, That it shall be lawful for the said Charles B. Waggener to sell the said property on the said fourth Saturday of January, one thousand eight hundred and sixty-three, or on any subsequent day to which he may continue or postpone the said sale, anything in the act of February the eighth, one thousand eight hundred and sixty-two, entitled "an act to amend and re-enact the act passed July the twenty-sixth, one thousand eight hundred and sixty-one, entitled 'an act staying the collection of certain debts,'" or in the act passed December the twenty-second, one thousand eight hundred and sixty-two, to amend and re-enact the said act of February the eighth, one thousand eight hundred and sixty-two, to the contrary notwithstanding.

Commencement.

2. This act shall be in force from its passage.

CHAP. 23.—An ACT to amend the Charter of the Wheeling Railroad Bridge Company.

Passed January 19, 1863.

The first section of an act to incorporate the Wheeling Railroad Bridge Co.

Be it enacted by the General Assembly, That the first section of "an act to incorporate the Wheeling Railroad Bridge Company," passed March thirtieth, eighteen hundred and sixty, be amended and re-enacted so as to read as follows:

By whom and where books of subscription may be opened.

1. Be it enacted by the General Assembly, That it shall be lawful for Thomas Sweeney, Jno. C. Campbell, Sobieski Brady, Chester D. Hubbard and Zachariah Jacob, or any three of them, to open books of subscription in the city of Wheeling, and at such other place or places as they may direct upon ten days notice, and under the direction of such agent or agents as they or a majority of them may appoint, for the purpose of receiving subscriptions of stock, in shares of one hundred dollars each, to an amount not less than two thousand and not more than ten thousand shares, to constitute a joint stock company to be called "The Wheeling Railroad Bridge Company," by which name the said company shall have authority to erect and maintain a railroad bridge across the Ohio river at any point it may select not farther south than the mouth of McMahon's creek, and not farther north than the northern end of Zane's Island, opposite the city of Wheeling: provided that the said bridge shall be so constructed as to leave an unobstructed headway over the channel of said river of not less than ninety feet above low water mark, and an unobstructed water-way between the piers of said bridge next the channel of not less than three hundred feet, and to connect within the corporate limits of Wheeling, their said bridge by railway with such railways as may terminate at or near Wheeling, as is hereinafter provided.

Amount of stock.

Name of company.

Fourth section of said act amended and re-enacted.

2. The fourth section of said act shall read as follows:

Lawful for company to establish rates of toll.

"§4. It shall be lawful for said company to establish rates of toll, which it may charge and collect on all locomotives, tenders, express, baggage and burden cars which may pass over said bridge and connections, and for such freight, passengers or other things as may be transported over said bridge and connections: provided, that the rates of toll shall be uniform and without discrimination as to all railroad companies, or persons and companies running or working a railroad or railroads which have their terminus on either side of the Ohio river at or near the city of Wheeling.

Proviso.

Transfer of passengers.

"And it is expressly enacted that all freight and passengers passing over or to pass over said bridge eastward or westward, shall where a transfer or change of cars is had or may be necessary from one car to another, within twenty-five miles of said city on either side of the Ohio river, be transferred and make such change of cars east of the Ohio river and not south of a point opposite to the mouth of McMahon's creek, and that the passenger trains on the Baltimore and Ohio Railroad Company's railroad and those of the Central Ohio Railroad shall commence and terminate their trips, at and from the city of Wheeling, giving to the passengers holding through tickets the privilege of going from such point of transfer, to and from the city of Wheeling, without additional charge, notice of which shall be posted in the cars of said companies respectively."

B. & O. railroad and C. O. railroad companies to commence and terminate their trips at the city of Wheeling.

The fourteenth section of said act repealed.

3. The fourteenth section of said act is hereby repealed.

4. The fifteenth section of said act shall read as follows:

"§15. The said company shall be subject to the provisions of the thirty-fifth section of the act entitled 'An act prescribing certain general regulations for the incorporation of railroad companies,' passed March eleventh, eighteen hundred and thirty-seven." The fifteenth section of said act amended and re-enacted.

5. The sixteenth section of said act is hereby repealed. The sixteenth section of said act repealed.

6. This act shall be in force from its passage. Commencement.

CHAP. 24.—An ACT declaring a part of Elk River a lawful fence.

Passed January 20, 1863.

1. Be it enacted by the General Assembly of Virginia, That so much of Elk river as lies between the mouth of Sand-creek and the lower line of the land of John D. Young on the northwest side thereof, in the county of Kanawha, be, and the same is hereby declared to be a lawful fence. Part of Elk river declared a lawful fence.

2. This act shall be in force from its passage. Commencement.

CHAP. 25.—An ACT authorizing the County Court of Preston County to re-assess one hundred and ninety and one-fourth acres of land in Preston county belonging to Caleb Conn.

Passed January 20, 1863.

1. Be it enacted by the General Assembly of Virginia, That the county court of Preston county be, and the same is hereby authorized to re-assess one hundred and ninety and one fourth acres of land situated on Tunnel Hill, in the county of Preston, and appearing on the commissioner's books of said county as the property of Caleb Conn: provided, the state shall not be subject to any expenses incurred thereby. County court of Preston county authorized to re-assess land in said county belonging to Caleb Conn. Proviso.

2. This act shall be in force from its passage. Commencement.

CHAP. 26.—An ACT to incorporate the Pittsburgh and Steubenville Coal Company.

Passed January 20, 1863.

1. Be it enacted by the General Assembly of Virginia, That James Andrews, Robert Henderson, John Scott, Thomas A. Scott, and Thomas L. Jewett, and such other persons as may hereafter be associated with them, shall be, and are hereby incorporated and made a body politic and corporate, by the name of "The Pittsburgh and Steubenville Coal Company," for the purpose of mining coal, and Incorporation. Style of company

Made subject to the rules, regulations and restrictions of the code of Virginia.

transporting coal to market, and they are hereby invested with the rights, powers and privileges, and made subject to all the rules, regulations and restrictions provided and prescribed in the code of Virginia, and any laws amendatory thereof, so far as the same are applicable and not inconsistent with the powers and rights herein granted.

Shares.

Subscriptions.

Proportion of votes.

2. The capital stock of said company shall not be less than twenty-five, nor more than two hundred thousand dollars, to be divided into shares of one hundred dollars each, and the said James Andrews, Robert Henderson, John Scott, Thomas A. Scott, and Thomas L. Jewett, or any three of them, may open books of subscription to the capital stock at such time and place as they may deem expedient; and they may receive subscriptions in land and personal property at such a rate as may be agreed upon, and fix the amount to be paid by each subscriber at the time of making his subscription. In all general meetings of the stockholders of said company, each stockholder shall have as many votes as he has shares.

Directors.

Power of president and directors.

3. The stockholders may elect not less than five, nor more than nine directors, who of their own number, may elect a president. The president and directors shall have power to make by-laws for the management of the company; to alter and amend the same; appoint agents and clerks and discharge the same at pleasure; to borrow money, not exceeding at any one time, the amount of its capital stock paid in, and may secure the payment of such debt by mortgage of the real or personal property of the company.

Authorized to construct a railroad.

May acquire not exceeding fifty acres of land.

4. It shall be lawful for said company to construct a railroad not exceeding two miles in length, for the purposes of the company, from some point near the Ohio river on the Holliday's Cove railroad, to a point on the Ohio river, suitable for shipping purposes, and to construct wharves, turn-outs, protections from ice, and whatever may be necessary for the purposes of the company. They may acquire lands, not exceeding in quantity fifty acres, and purchase the coal privilege of lands; and they shall have power to build their road and improvements upon the lands of persons, other than those of said company, with the consent of the owner of such lands, or by contract with such owner. And the said company may navigate, by steamers and barges, the Ohio and Mississippi rivers and their tributaries, in carrying their coal to market.

5. The stock of the company shall be transferable under such regulations and restrictions as the president and directors may establish from time to time.

Commencement.

6. This act shall be in force from its passage.

CHAP. 27.—An ACT to amend and re-enact the tenth section of chapter 170 of the Code of Virginia.

Passed January 22, 1863.

1. Be it enacted by the General Assembly of Virginia, That the tenth section of chapter one hundred and seventy of the code of Virginia, edition of eighteen hundred and sixty, be amended and re-enacted so as to read as follows, viz:

Section ten of chapter 170 of the code of 1860 amended and re-enacted.

"§10. On affidavit that a defendant is not a resident of this state, or that diligence has been used by or on behalf of the plaintiff to ascertain in what county or corporation he is, without effect, or that process, directed to the officer of the county or corporation in which he resides, or is, or has twice been delivered to such officer more than ten days before the return day, and being returned without being executed, or that the defendant in any suit has left the county or corporation wherein the cause of action or any part thereof arose, and wherein said suit is or may be pending, and that process directed to the officer of the county where such defendant resides, or is, cannot be delivered to such officer or executed by him, by reason of insurrection, rebellion or armed resistance to the enforcement of the laws, an order of publication may be entered against such defendant; and in any suit in equity where the bill states that the names of any persons interested in the subject to be divided or disposed of, are unknown, and makes such persons defendants, by the general description of the parties unknown, on affidavit of the fact, that the said names are unknown, an order of publication may be entered against such unknown parties; any order under this section may be entered either in court or at the rules: In a proceeding by petition there may be an order of publication in like manner as in a suit in equity.

2. This act shall take effect from and after its passage.

Commencement.

CHAP. 28.—An ACT to amend and re-enact the first and seventh sections of chapter forty-six of the Code of Virginia.

Passed January 22, 1863.

1. Be it enacted by the General Assembly, That the first section of chapter forty-six of the code of Virginia, (edition of eighteen hundred and sixty,) be amended and re-enacted so as to read as follows:

Section one of chapter 46 of the code of 1860 amended and re-enacted.

"§1. When the auditor of public accounts shall disallow, either in whole or part, any such claim against the commonwealth as is provided for by the twelfth section of the forty-sixth chapter, the person prosecuting such claim may petition the circuit court for the county in which the seat of government is for redress; and when a person has any other claim against the commonwealth, redress may be obtained in the said court by a petition or by a bill in chancery, according to the nature of the case."

Section 7 of chapter 46 amended and re-enacted.

2. Be it further enacted, That the seventh section of chapter forty-six be amended and re-enacted so as to read as follows:

"§7. There shall be brought and prosecuted in the circuit court of the county in which the seat of government is, all suits in which it may be necessary or proper to make any of the following public persons a party defendant as representing the commonwealth, to-wit: the governor, attorney-general, treasurer, or auditor of public accounts, or in which it may be necessary or proper to make any of the following public corporations, parties defendants, to-wit: the board of the literary fund, board of public works, or any other public corporation composed of officers of the government, of the funds and property of which the commonwealth is sole owner, or in which it shall be attempted to enjoin or otherwise suspend or effect any judgment or decree on behalf of the commonwealth obtained in any circuit court holden in the county of Ohio or the city of Richmond, or any execution issued on such judgment or decree."

Commencement.

3. This act shall be in force from its passage.

CHAP. 29.—An ACT authorizing Messrs. Smith & Williams to sell goods in Jackson County.

Passed January 24, 1863.

Sheriff authorized to issue a license to.

1. Be it enacted by the General Assembly of Virginia, That the sheriff of Jackson county be, and is hereby authorized to issue a merchant's license for the year eighteen hundred and sixty-two, to Messrs. Smith and Williams, in the said county of Jackson, without requiring the payment of the tax lawfully imposed thereon, provided that the said sheriff of Jackson county shall require the said Smith and Williams to surrender the license now in their possession authorizing them to sell goods in Roane county.

Proviso.

Commencement.

2. This act shall be in force from its passage.

CHAP. 30.—An ACT providing for the return of the Special Election for a Representative in the Seventh Congressional District, held on the 15th day of January, 1863.

Passed January 24, 1863.

The clerk of the county court authorized to make returns.

1. Be it enacted by the General Assembly, That the clerk of the county court authorized by law to make returns of the election held on the fifteenth day of January, eighteen hundred and sixty-three, for a representative in congress for the seventh district, be and is hereby authorized and required to ascertain the result and grant certificates thereof, at any time within the thirty days allowed therefor.

Commencement.

2. This act shall be in force from its passage.

Chap. 31.—An ACT to incorporate the Clarksburg Coal and Iron Company.

Passed January 24, 1863.

1. Be it enacted by the General Assembly of the State of Virginia, That John Robinson, M. P. O'Hern, and James W. Stoddard, and such other persons as may hereafter be associated with them, shall be, and they are hereby incorporated and made a body politic and corporate for the purpose of mining coal and iron ore and manufacturing iron and other articles, and vending the same under the name and style of the "Clarksburg Coal and Iron Company," and are hereby invested with all the rights, powers and privileges conferred on such bodies politic and to continue for fifty years. Incorporated. Name and style of company.

2. That the capital stock of said company shall be two hundred and fifty thousand dollars, divided into shares of twenty dollars each, that the subscription may be made in money, real and personal estate; the real and personal estate may be taken at the rate agreed upon by the contracting parties; and the president and directors, or a majority of them, shall have full power to manage the affairs of the company. Capital stock. Shares. Subscriptions.

3. The president and directors shall have power to purchase and hold any other mining property and land, not to exceed five thousand acres, in any county in the state of Virginia. President and directors may purchase land not to exceed five thousand acres.

4. The president and directors, or a majority of them, shall have power to issue coupon or other bonds, but not to exceed one-half of the capital stock of said company, and the property of the company shall be security therefor. Power to issue coupon or other bonds.

5. This act shall be in force from its passage. Commencement.

Chap. 32.—An ACT appropriating forty thousand dollars to the Lunatic Asylum west of the Allegheny Mountains.

Passed January 27, 1863.

1. Be it enacted by the General Assembly, That the sum of forty thousand dollars be, and is hereby appropriated out of any moneys in the treasury, not otherwise appropriated, to the Lunatic Asylum west of the Allegheny mountains, to be expended under the direction of the board of directors, first for the finishing and furnishing of the south wing of said Asylum ready for use, and the residue of said appropriation shall be for the further prosecution and erection of the main building connected with said south wing, and the money to be drawn from time to time from the treasury as the work may progress. Forty thousand dollars appropriated to the Lunatic Asylum. How to be expended.

2. This act shall be in force from its passage. Commencement.

CHAP. 33.—An ACT providing for the removal of criminals and criminal causes from the counties of Braxton and Randolph to the county of Lewis.

Passed January 28, 1863.

Lawful for the county or circuit courts of Braxton and Randolph counties to make an order for the transfer to the county or circuit court of Lewis county of any criminal cause now pending therein.

1. Be it enacted by the General Assembly of Virgina, That it will be lawful for the county or circuit court of the counties of Braxton and Randolph to make an order for the removal and transfer to the county or circuit court of Lewis county for trial therein, any criminal cause now pending therein, or which may hereafter be commenced in the courts of the said counties. And the said courts of the said county of Lewis have and exercise the same jurisdiction over the same as if the said cause had commenced in the courts of the said county of Lewis. And if there be no courts organized in said counties of Braxton and Randolph, it will be lawful for the justices of said counties to commit any criminal into the custody of the jailor of Lewis county, and he shall receive into his custody any such criminal so committed to him or his deputy, and keep as if such criminal had been committed by a justice of the peace for the county of Lewis.

Commencement.

2. This act shall be in force from its passage.

CHAP. 34.—An ACT authorizing the Board of Public Works to hire out certain convicts.

Passed January 28, 1863.

Preamble.

Whereas, It is represented to the General Assembly of Virginia, That there are convicts who have been sentenced to the penitentiary, since the existence of hostilities and the reorganization of the state government; and whereas, there being no penitentiary in the loyal portion of the state, and whereas by an act of the general assembly, passed on the twenty-sixth of July, eighteen hundred and sixty-one, the governor was authorized to use the jails of the several counties of this commonwealth for the confinement of said convicts.

The board of public works authorized to hire out certain convicts.

1. Be it therefore enacted by the General Assembly of Virginia, That the board of public works, be, and they are hereby authorized to hire out said convicts so confined in the several county jails, to a superintendent or superintendents of works of internal improvements; undertaken by the state, in whole or in part, or any other works of a corporation or individual, and the wages for the labor of such convicts, requiring of such superintendent such assurance for the safe keeping, together with all the necessary provisions to carry out this act, either by appointing a suitable overseer over such convicts, or otherwise.

Commencement.

2. This act shall be in force from its passage.

CHAP. 35.—An ACT to repeal and re-enact section second of an Act to authorize the Trustees of Brooke Academy to transfer their property to the Meade Collegiate Institute, and to authorize said Institute to transfer the same property to the Trustees hereinafter appointed, passed February 6, 1862, to read as follows:

Passed January 28, 1863.

Section second amended and re-enacted.

1. Be it enacted by the General Assembly of Virginia, That the second section of an act to authorize the trustees of Brooke Academy to transfer their property to the Meade Collegiate Institute, and to authorize said Institute to transfer the same property to the trustees hereinafter appointed, passed February sixth, eighteen hundred and sixty-two, be amended and re-enacted so as to read as follows:

"§2. Be it enacted, that Hugh W. Crothers, Danforth Brown, David Fleming, Obadiah Langfitt, Samuel George, Adam Kuhn, Joseph C. Gist, William H. Harvey, Joseph Applegate, John D. Wier, and Thomas Everett, be, and they are hereby appointed and made trustees of the Brooke Academy, a majority of whom shall have power to act and to fill all vacancies occurring in their own body. And the said trustees are hereby authorized to take possession of all real estate formerly belonging to said Brooke Academy, whenever the same shall have been conveyed to them as hereinafter provided for, and to collect and receive all moneys due or in any wise belonging to or held in the name of Brooke Academy, and apply the same to the best advantage for an academy of education within the intent and meaning of its former charter. And they are hereby authorized to purchase other real estate for the purpose of enlarging said academy and of adding thereto a female seminary, whether such real estate adjoins the aforesaid real estate or not, and to this end may accept donations in land, money or other property."

2. This act shall be in force from and after its passage. Commencement.

CHAP. 36.—An ACT providing for the amendment and re-enactment of the eleventh section of chapter twenty-ninth of the Code of eighteen hundred and sixty.

Passed January 29, 1863.

Section eleven of chapter 29 of the code of 1860 amended and re-enacted.

1. Be it enacted by the General Assembly of Virginia, That the eleventh section of chapter twenty-ninth of the code of eighteen hundred and sixty, be amended and re-enacted so as to read as follows:

"§11. No proceeding shall be had in any court at law or in equity, or any execution against the person or property of one who has volunteered, or who has been drafted and ordered into actual service, (whether of the state or of the United States,) or against his surety from the time such person shall be ordered to the place of rendezvous until three months after his term of service shall have expired. In any case where a suit or other proceeding has been commenced before the passage of this act, against any such person or his sureties, it shall not be necessary for him or his sureties to set forth the fact that any such person against whom any suit or other proceeding may have been commenced, has volunteered or been drafted and ordered into actual service, by a formal plea in abatement or other plea, but an affidavit in writing of any such person, or agent, that such person has volunteered or been drafted into the actual service, and as satisfactory proof thereof, the court or justice before whom such proceeding may be pending shall order such suit or proceedings to be stayed until the expiration of three months after the term of service of any such person shall have expired, when the same may be proceeded in as if this act had not been passed. This act shall not apply to any person who shall have received the money of another in a fiduciary character, nor as an officer of this commonwealth, or of any court, nor to any of his sureties, nor to any person who shall have employed a substitute to perform his term of duty, nor shall it prevent the granting or reinstating of any injunction."

Commencement.

2. This act shall be in force from its passage.

CHAP. 37.—An ACT declaring the North Fork of Fishing Creek, in the county of Wetzel, a public highway.

Passed January 29, 1863.

A portion of the North Fork of Fishing Creek declared a public highway.

1. Be it enacted by the General Assembly of Virginia, That the north fork of Fishing creek, in the county of Wetzel, from the main fork up to Jeremiah H. King's mills, be, and the same is hereby declared a public highway for the transportation of boats, lumber, &c.

Unlawful to obstruct navigation

2. Be it further enacted, that it shall be unlawful to obstruct said navigation by the erection of mill-dams, or otherwise.

Commencement.

3. This act shall be in force from its passage.

CHAP. 38.—An ACT providing for the removal of Criminal Causes from the County of Tucker to the County of Preston.

Passed January 29, 1863.

Courts of Tucker county to transfer criminal causes to Preston county.

1. Be it enacted by the General Assembly of Virginia, That it will be lawful for the county or circuit courts of Tucker county to make an order for the transfer and removal to the county or circuit court of Preston county for trial therein, any criminal cause now pending

therein, or which may hereafter be commenced in the said county, and the courts of Preston county shall have and exercise the same jurisdiction over and for the trial of any such person so removed, as if the same had been commenced in the courts of the said Preston county.

2. This act shall be in force from its passage. Commencement.

CHAP. 39.—An ACT allowing mileage to the Delegates of the Convention.

Passed January 30, 1863.

1. Be it enacted by the General Assembly, That the delegates to the convention which is to assemble at the city of Wheeling on the twelfth day of February, eighteen hundred and sixty-three, shall be entitled to the same mileage as is now allowed by law to members of the general assembly. Delegates to convention entitled to mileage.

2. This act shall be in force from its passage. Commencement.

CHAP. 40.—An ACT to amend and re-enact the Act passed May 15th, 1862, entitled "An Act to reorganize the Kanawha Board."

Passed January 30, 1863.

1. Be it enacted by the General Assembly, That sections four and five of the act passed May the fifteenth, eighteen hundred and sixty-two, be amended and re-enacted so as to read as follows:

"§4. The board of public works, when in their opinion the services of such an officer are required, shall appoint a general superintendent, who shall have supervision of both the Kanawha river and road, whose duty it shall be to collect from the gate-keepers, quarterly, the net proceeds of tolls collected by said gate-keepers, and keep such road in repair by the use of said tolls and pay over the residue to the Kanawha board for the river improvement; also, to take charge of and secure for the use of the board, all the boats, tools and other property now on the river, which was procured by the Kanawha board in and for the improvement of the Kanawha river and road, and manage and superintend the improvement of the river, subject to the control of said Kanawha board, and shall make quarterly returns to said board, of his collections and disbursements, and shall receive for his services annually, a sum not exceeding one thousand dollars." Section four amended and re-enacted.

"§5. The said Kanawha board shall annually make full report to the board of public works, of all their acts and doings, pertaining to said river and road improvement." Section five amended and re-enacted.

2. This act shall be in force from its passage. Commencement.

CHAP. 41.—An ACT to legalize the appointment of Ferdinand Lewis, as Administrator of the estate of Solomon Michael, Sr., late of Hardy county.

Passed January 30, 1863.

Appointment of Ferdinand Lewis confirmed.

1. Be it enacted by the General Assembly of Virginia, That the appointment made by Abijah Dolly, a justice of the peace in and for the county of Hardy, in the state of Virginia, of Ferdinand Lewis as the administrator of the personal estate of Solomon Michael, sr., deceased, late of Hardy county, be, and the same is hereby declared legal and binding in law. And that all the acts and proceedings of said administrator have the same force and effect as though said appointment and qualification had been made and done by the county court of said county of Hardy.

Bond authorized to be filed in Preston county county.

2. In the event of there being no court or clerk in the county of Hardy, the bond executed by Ferdinand Lewis, with William Michael and John Michael, as his securities in said administration, shall be filed and there preserved in the clerk's office of the county court of Preston county, and shall be in all respects as binding as though given before the county court of Hardy county, and filed in the clerk's office of said court of Hardy county.

Commencement.

3. This act shall be in force from its passage.

CHAP. 42.—An ACT for the relief of E. H. Mayo.

Passed January 30, 1863.

E. H. Mayo released from the payment of a merchant's license.

1. Be it enacted by the General Assembly, That E. H. Mayo, of Kanawha county, be, and is hereby released from the payment of a merchant's license imposed upon him for the year eighteen hundred and sixty-two.

Commencement.

2. This act shall be in force from its passage.

CHAP. 43.—An ACT authorizing the Governor to postpone the May Elections for the year 1863.

Passed January 30, 1863.

Elections on the fourth Thursday of May postponed.

1. Be it enacted by the General Assembly, That if the convention and people of the proposed state of West Virginia shall ratify the change in their constitution proposed by congress, then the governor of this commonwealth shall issue his proclamation, suspending and postponing, until the fourth Thursday of October, within the boundaries of the said proposed state, the elections appointed by law to be held on the fourth Thursday of May next; and if the said proposed state, shall within the said period, become one of the United States, such suspension and postponement shall become perpetual.

Commencement.

2. This act shall be in force from its passage.

CHAP. 44.—An ACT for the relief of George Fisher, Commissioner of the Revenue for Lewis County.

Passed January 30, 1863.

1. Be it enacted by the General Assembly, That the auditor be, and is hereby directed to issue his warrant in favor of George Fisher, for the sum of seventy-five dollars, to be paid out of any money in the treasury not otherwise appropriated, being the amount due said George Fisher for services rendered by him as commissioner of the revenue for Lewis county for the year eighteen hundred and sixty-one.

Auditor to pay George Fisher seventy-five dollars.

2. This act shall be in force from its passage.

Commencement.

CHAP. 45.—An ACT to amend the second section of chapter four of the Code of Virginia in relation to districting the State for Representatives in Congress.

Passed January 30, 1863.

1. Be it enacted by the General Assembly, That the second section of chapter four of the code of Virginia, be, and the same is hereby amended and re-enacted so as to read as follows:

Section second amended and re-enacted.

"§2. The number of members to which this state is entitled in the house of representatives of the United States, shall continue apportioned amongst the several counties, cities, towns and corporations of the state arranged into eleven districts, numbered as follows, that is to say:

Apportionment of representatives.

Number of districts.

"The counties of Accomac, Northampton, Northumberland, Westmoreland, Richmond, Essex, Lancaster, Middlesex, King and Queen, King William, New Kent, Gloucester, Matthews, York, James City, Elizabeth City, Warwick, Charles City, King George, and Caroline, with a population of one hundred and twenty-nine thousand two hundred and one, form the first congressional district.

First district.

"And the counties of Princess Anne, Norfolk and City, Nansemond, Isle of Wight, Southampton, Sussex, Surry, Prince George, Dinwiddie, Greenville, and Brunswick, with a population of one hundred and twenty-nine thousand nine hundred and one, form the second congressional district.

Second district.

"And the counties of Stafford, Spottsylvania, Orange, Culpeper, Rappahannock, Louisa, Hanover, Henrico, Richmond City, and Goochland, with a population of one hundred and thirty-three thousand one hundred and thirty-nine, form the third congressional district.

Third district.

"And the counties of Mecklenburg, Lunenburg, Charlotte, Appomattox, Prince Edward, Nottoway, Buckingham, Cumberland, Amelia, Powhattan, Chesterfield, Fluvanna, Amherst, and Nelson, with a population of one hundred and thirty-five thousand eight hundred and twenty-nine, form the fourth congressional district.

Fourth district.

Fifth district. "And the counties of Patrick, Henry, Franklin, Pittsylvania, Halifax, Campbell, Bedford and Roanoke, with a population of one hundred and thirty-two thousand six hundred and eighty, form the fifth congressional district.

Sixth district. "And the counties of Rockingham, Augusta, Rockbridge, Highland, Bath, Allegheny, Bottetourt, Albemarle, Page, Greene, Madison and Craig, with a population of one hundred and thirty-one thousand three hundred and eighty, form the sixth congressional district.

Seventh district. "And the counties of Alexandria, Berkeley, Frederick, Shenandoah, Jefferson, Clark, Warren, Loudon, Fauquier, Fairfax and Prince William, with a population of one hundred and thirty-three thousand and eighty-two, form the seventh congressional district.

Eighth district. "And the counties of Lee, Scott, Wise, Buckhannon, Russell, Washington, Grayson, Smythe, Tazewell, Bland, Wythe, Carroll, Pulaski, Giles, Montgomery and Floyd, with a population of one hundred and twenty-nine thousand nine hundred and thirty-four, form the eighth congressional district.

Ninth district. "And the counties of Ohio, Hancock, Brooke, Marshall, Wetzel, Tyler, Pleasants, Doddridge, Harrison, Ritchie, Wood, Wirt, Gilmer, Calhoun and Roane, with a population of one hundred and fourteen thousand one hundred and forty-one, form the ninth congressional district.

Tenth district. "And the counties of Kanawha, Jackson, Mason, Putnam, Cabell, Clay, Wayne, Logan, Boone, Braxton, Nicholas, McDowell, Wyoming, Raleigh, Fayette, Mercer, Monroe and Greenbrier, with a population of one hundred and seventeen thousand three hundred and seventy-eight, form the tenth congressional district.

Eleventh district. "And the counties of Taylor, Marion, Monongalia, Preston, Tucker, Lewis, Barbour, Upshur, Webster, Pocahontas, Randolph, Pendleton, Hardy, Hampshire and Morgan, with a population of one hundred and fourteen thousand eight hundred and seven, form the eleventh congressional district."

Commencement. 2. This act shall be in force from its passage.

CHAP. 46.—An ACT to incorporate the Citizens' Railway Company of the City of Wheeling.

Passed January 30, 1863.

Incorporators. 1. Be it enacted by the General Assembly, That John L. Hobbs, S. H. Woodward, Chester D. Hubbard, Joshua Bodley, John List, Robert Crangle, Andrew J. Sweeney, Robert Irwin, or a majority of them be, and they are hereby appointed commissioners to open books for the purpose of receiving subscriptions to the capital stock of the

Name of Company.

Powers.

company hereby incorporated, by the name, style and title of the "Citizens' Railway Company," with power to lay out and construct a railway of single track, and the necessary sidlings and switches, which may commence at any point not farther south than the southern line of Ohio county, and may run through the town of South Wheeling of Fifth street to Denny street, along Denny street to Jacob street, along Jacob street into the city of Wheeling by said street to Chapline street, along Chapline street to First street, along First street to Main street, along Main street to John street, along John street to Market street, along Market street to Madison street, along Madison street to Main street, along Main street to the Martin's Ferry Landing, and from Main street along Madison street across the suspension bridge and along Zane street, and across the western bridge to the limits of the state of Virginia. The consent of the several corporations through whose streets the said railway passes having been first obtained for the use of said streets, and the said company are hereby empowered and authorized to use any other streets of said corporations for their business, when a like consent is obtained.

Consent.

Capital stock.

Shares.

2. That the capital stock of the said company shall consist of not less than twenty-five thousand nor more than one hundred thousand dollars, which shall be divided into shares of fifty dollars each.

Notice of meeting.

Organization.

Terms.

May increase the capital stock.

Wheeling and Belmont Company may subscribe.

3. That as soon as twenty-five thousand dollars of said stock is subscribed for *bona fide*, the said commissioners, or a majority of them, may call a meeting of the said subscribers—giving at least ten days' notice of the time and place thereof, by publication in one or more newspapers published in the city of Wheeling, and if a majority of said stockholders is not represented on that day in person or by proxy, the meeting shall stand adjourned from day to day until a majority of said stock shall be represented. The stockholders at said meeting shall proceed to organize said corporation, and shall choose, by a majority of the votes represented at said meeting, by ballot, five directors, all of whom shall be citizens of Ohio county, who shall choose one of their number to be president, all of whom shall serve until the time fixed in the by-laws for the next annual meeting of the stockholders, or until their successors are regularly and lawfully chosen, that each and every member of said corporation shall be entitled to vote for each share of stock held by him or her; and that the directors af said company may at any time increase the capital stock to the maximum limit of one hundred thousand dollars, and the Wheeling and Belmont Bridge Company are hereby authorized and empowered to subscribe to said stock to an amount not exceeding ten thousand dollars.

4. That as soon as the stockholders shall have elected the directors as aforesaid, the said stockholders shall become a body corporate in deed and in law by the name, style and title of "The Citizens' Railway Company," and by said name they shall have perpetual succession, with power to make a corporate seal, and the same to alter,

modify and renew at pleasure, and to ordain, establish and put in execution such by-laws, ordinances, rules and regulations, as shall appear necessary and convenient for the said corporation and not being contrary to the constitution of the United States, nor of this commonwealth, and shall be capable of taking and holding their capital stock and the increase of profits, and of purchasing, taking, receiving and holding all such real estate and personal property as may be necessary and convenient to enable them to carry on the business and traffic of their said road with economy, facility and dispatch, and the same to exchange, barter, sell, let or lease on ground rent, mortgage or lease, or otherwise dispose of at their pleasure, and of suing and being sued, pleading and being impleaded by the corporate name, and shall have generally all the rights, privileges, franchises and incidents belonging and appertaining to a corporation, and the right of doing all and every other matter and thing which a corporation may lawfully do.

Transfer of stock.

5. That said company shall not allow the transfer of any share or shares of stock, except by resolution of the board of directors, until all the instalments have been paid, and if any stockholder shall omit for the space of six months, to pay any instalment which may have been called for, the directors of the company may either declare the share or shares of stock on which the instalment or instalments are unpaid, as aforesaid, to be forfeited, or may at their option bring suit to recover the said instalment or instalments with interest at the rate of ten per centum per annum, against the person or persons appearing by their books to be the owner or owners thereof.

Dividends.

6. That the dividends of so much of the profits of said company as shall appear advisable to the directors, shall be declared in the months of January and July of each year, and be paid at the office of said company any time after ten day's notice from the time of declaring the same, but said dividends shall in no case exceed the amount of the net profits of said company, so that the capital stock shall never be thereby impaired, and in case the directors shall declare a dividend exceeding the amount of the net profits, and thereby impair the capital stock, they shall be held individually liable for all such excess.

Guage of road.

7. That the said railway company shall be, and they are hereby required to lay the track of their said road of such a guage as to be most convenient for the use of carriages and buggies passing over the said road, and in all cases the carriage or vehicle following the car shall have the right to the track, and the carriage or vehicle coming in the opposite direction, shall be required to turn off of the track.

8. That if any person or persons shall wilfully break, remove, destroy or injure any part of said railway or cars, carriages, station houses, or any buildings or property of said company, or shall, without the consent of said company, wilfully and unnecessarily obstruct

or impede the passage on or over the said railway or any part thereof, the person or persons so offending shall forfeit and pay for every such offence, the sum of five dollars to the said company, but no such suit shall be brought unless commenced within thirty days after such offence shall have been committed, and the person or persons so offending shall be liable, in addition to said penalty, to action or actions at the suit of the said railway company, for any loss or damage occasioned by his or her or their acts as aforesaid.

Offences.

Limitation of suit.

9. The said railway company shall not alter the grade of any street over which the said road passes, without the consent of the corporation through which the said street passes having first been obtained to the said alteration, and the said railway company shall keep so much of the said streets in perpetual and good repair, as are used by the said company, from the distance of two feet on the outer side of one rail to a like distance on the outer side of the opposite rail of their said track, at the proper expense and charge of the said company, and the said company shall in no case use locomotive engines on said road without first obtaining the consent of the corporation through which the said railway passes.

Grades of streets.

10. That the corporations through which the said railway passes shall have power to establish such regulations in said railway, as may be requisite for the purpose of paving, repairing, grading, culverting and laying gas and water pipes in and along the streets used by said company, and to prevent obstructions thereon; and the corporation of the city of Wheeling may assess and collect a tax on the cars used by said company on the streets of said city, of a sum to be agreed on between the said company and the said city; provided, the said sum so assessed be not more than at the rate of twenty-five dollars per annum, for each car used in the said streets; and the town of South Wheeling may, in like manner, assess and collect a tax on the cars run through the streets of said town, of a sum not exceeding the rate of five dollars a year for each car used in said streets.

Powers of corporations through which the said road passes.

Tax.

11. That no greater fare shall be charged upon the line of said road, east of the Ohio river, than ten cents per passenger, and no greater fare on the line of said road passing over the bridges and island, to the limit of the state of Virginia, than fifteen cents per passenger, and the said railway company are hereby authorized and empowered to transfer and carry to and from any and all points upon the line of said road, baggage, parcels and packages, at such rates as may be fixed by the board of directors of the company.

Fare.

12. This act shall be in force from its passage.

Commencement.

CHAP. 47.—An ACT making an appropriation to rebuild a bridge over Stony River on the Northwestern Turnpike, in Hardy County.

Passed January 30, 1863.

Appropriation for rebuilding bridge over Stony river.

1. Be it enacted by the General Assembly of Virginia, That the sum of thirty-two dollars be, and is hereby appropriated out of any money in the treasury, not otherwise appropriated, to be expended by the board of public works for the purpose of re-building the bridge over Stony river on the northwestern turnpike in Hardy county.

Commencement.

2. This act shall be in force from its passage.

CHAP. 48.—An ACT appropriating the Capitation Tax for the year 1862, for educational purposes.

Passed January 30, 1863.

Auditor to ascertain amount of capitation tax paid into the treasury for the years 1861 and 1862.

1. Be it enacted by the General Assembly, That the auditor of public accounts do ascertain as soon as practicable, the amount of capitation tax paid into the treasury for the years eighteen hundred and sixty-one and eighteen hundred and sixty-two, from the several counties and the cities and towns having corporation courts, and set apart the same to the credit of the literary fund for the purposes of education and primary and free schools.

How fund to be applied.

2. The said auditor shall cause the amount thus ascertained by him to have been paid into the treasury, from each county, city or town having a county or corporation court, to be paid to and applied in every such county, city or town, to the purposes of education in the manner now prescribed by law, and to existing claims lawfully due from said fund for educational purposes, in the order of time in which they were audited and allowed according to law.

What constitute the fund.

Proviso.

3. The money in the treasury of the state, as well as all moneys that may hereafter come into the treasury, derived either from fines, forfeitures or dividends on stocks standing in the name of the literary fund, as well as interest on loans due the same, shall constitute part of the general fund of the state; provided, however, that the general assembly, when the cities, towns and counties of the state are in condition to use the same, be refunded and distributed as the general assembly shall think just and proper.

Commencement.

2. This act shall be in force from its passage.

CHAP. 49.—An ACT staying the collection of certain debts.

Passed January 30, 1863.

No writ of fieri facias, or other process to issue.

1. Be it enacted by the General Assembly of Virginia, That no writ of *fieri facias*, order, or other process issued under any judgment or decree heretofore rendered by any court of this common-

wealth, or justice of the peace, nor that may be hereafter rendered by any such court or justice, shall be placed in the hands of any sheriff or other officer to be levied, while this act shall remain in force, nor shall there be any sales under any deed of trust heretofore recorded, without the consent of all the parties thereto, nor under any decree or judgment since rendered or that may be hereafter rendered, except as otherwise herein provided for, and in any case where a levy has been made previous to the passage of this act, the property so levied on shall be returned to the owner, and the judgment under which the levy was made, shall be a lien on all the property, both personal and real, of the debtor, and shall have priority over all other judgments as to the personal property of such debtor.

No sales to be had under any deed of trust heretofore executed.

Levy.

Property to be returned to owner.

Lien.

2. Be it further enacted, That any person may sue for any debt, and maintain any action at law or in equity, and proceed to judgment therein, and any judgment, execution, order or decree now issued or rendered, or that may hereafter be rendered, shall, in addition to the provisions of chapter one hundred and eighty-six and one hundred and eighty-eight of the code of eighteen hundred and sixty, constitute a lien on all the estate, both personal and real of the judgment debtor, from and after the docketing of any such judgment, as is provided for in the third and fourth sections of chapter one hundred and eighty-six of the code of eighteen hundred and sixty. This provision shall include all judgments whether rendered by justices of the peace or courts of this commonwealth.

Lien on real and personal estate.

What is included.

3. In all debts or liabilities accruing before the twenty-sixth day of July, eighteen hundred and sixty-one, the debtor is required, upon the demand of the creditor, to pay the interest due thereon within six months after demand thereof, and upon failure therein, may be proceeded against as if this act had never been passed.

Debtor required to pay the interest on demand.

4. Be it further enacted, that in all cases where a lien has been acquired by judgment or decree before any court or justice of the peace of this commonwealth, or by any deed of trust, the creditor may proceed against the debtor, and enforce the collection of his debt, interest and costs, in the same manner as if this act had never been passed; provided, however, that such creditor, his assignee, personal representative, agent, or attorney, shall first file with the clerk of the court or justice of the peace, as the case may be, an affidavit that the affiant believes that the debtor in such case intends to remove or has removed his effects out of the county where the judgment or decree was rendered, or in which the same is docketed, or if a deed of trust, out of the county where the same is recorded, or that he is fraudulently removing, or disposing of the same, so that it will not be forthcoming and liable to the payment of the judgment, decree or deed of trust, as the case may be, at the expiration of this act. But the debtor may contest the creditor's right to such proceedings, and upon a motion by the debtor to quash the same upon the grounds that he was not removing, nor did intend so to remove his effects or fraudulently dispose of the same, as alleged by the creditor, the court

When the debtor may enforce the collection of his debt.

Proviso.

When debtor may contest creditor's right to proceed against him.

or justice of the peace before whom such motion is made, shall, in determining such controversy be governed by the same rules of law that they are now governed by in determining cases of attachments; provided, however, that no sale or barter by any person in the ordinary transaction of his business or calling, shall be deemed to be fraudulent, within the meaning of this section.

Proviso.

Exceptions.

5. Be it further enacted, That nothing herein contained shall be construed so as to interfere with or abridge the law now in force in relation to attachments and acts of detinue and trover, nor in relation to injuries or torts, nor in relation to actions of ejectment and unlawful entry and detainer, nor in relation to the prosecution of criminal offences and the collection of fines, taxes, licenses, county levies, and all debts due the commonwealth, but the same may be proceeded in as now provided for by law, nor shall this act apply to sheriffs, constables, or other public officers, either to the state, counties, corporations or individuals, nor to attorneys at law, for moneys collected, nor to debts contracted after the twenty-sixth day of July, eighteen hundred and sixty-one, nor to debts nor deeds of trust executed after the said twenty-sixth day of July, eighteen hundred and sixty-one; but payment of and sales under the same may be enforced and proceeded in as if this act had not been passed; nor shall the time during which this act is in force be computed in any case in which the statute of limitations may come in question; provided, however, that the benefits of this act shall not extend to any person who shall, after the passage thereof, be engaged in levying war against the government of the United States, or against the reorganized government of Virginia, adhering to and giving aid and comfort to their enemies, and any judgment creditor may issue his execution and proceed to the collection of such judgment upon making affidavit before the clerk of the court wherein such judgment is recorded or before the justice by whom the judgment was rendered, that such debtor is so engaged, which execution may be quashed at the instance of the defendant upon his showing that the allegations upon which it issued, were untrue.

Proviso.

Commencement.
Expiration.

6. This act shall be in force from the first day of February, eighteen hundred and sixty-three, and shall expire on the first day of January, eighteen hundred and sixty-four.

CHAP. 50.—An ACT changing a place of voting in the county of Morgan.

Passed January 31, 1863.

Place of holding elections discontinued.

1. Be it enacted by the General Assembly, That the separate elections heretofore authorized to be holden at the houses of Unger and Humes, in the county of Morgan, be and the same are hereby abolished, and in lieu thereof the elections hereafter to be held for

said places of voting, shall be held at the house of Bazzoc Shockeys, in said county of Morgan, at which election precinct all persons qualified by law to vote, may vote. New place of voting.

2. This act shall be in force from its passage. Commencement.

CHAP. 51.—An ACT allowing certain claims out of any money derived from assessment of fines for the non-performance of military duty, under the order of the Governor by his proclamation dated September 9th, 1862.

Passed January 31, 1863.

1. Be it enacted by the General Assembly of Virginia, That the auditor of public accounts be required to pay any claims of any county when properly certified by a regimental court, for expenses incurred by said county in organizing and drilling the militia in September, October and November, eighteen hundred and sixty-two, under the order of the governor by his proclamation dated September ninth, eighteen hundred and sixty-two, out of any money that may come into the treasury from the assessment of fines against persons in said county for non-performance of military duty in September, October and November, eighteen hundred and sixty-two, under the order of the governor by his proclamation dated September ninth, eighteen hundred and sixty-two. Expenses of militia.

2. This act shall be in force from its passage. Commencement.

CHAP. 52.—An ACT in reference to the troops raised within the boundaries of the proposed State of West Virginia.

Passed January 31, 1863.

1. Be it enacted by the General Assembly of Virginia, That the troops raised within the boundaries of the proposed state of West Virginia, and in the service of the United States, shall, when the said proposed state becomes one of the United States, be and become to all intents and purposes the volunteer militia of the state of West Virginia in the service of the United States, and shall be regulated, governed and officered in the same manner as if they had been raised and organized under the constitution and laws of the state of West Virginia. Troops of West Virginia.

2. This act shall be in force from its passage. Commencement.

CHAP. 53.—An ACT changing the place of holding Elections in Pleasants county.

Passed January 31, 1863.

1. Be it enacted by the General Assembly, That the election precinct heretofore existing at Pine Grove Meeting House in the

Election precinct abolished. Election precinct established. second magisterial district, in the county of Pleasants, be and the same is hereby abolished, and in lieu thereof the elections shall be held at T. D. Gorrell's store, in Hebron, in the district and county above named, which is hereby made a lawful place of voting.

Commencement. 2. This act shall be in force from and after its passage.

CHAP. 54.—An ACT giving the consent of the State of Virginia to the county of Berkeley being admitted into and becoming part of the State of West Virginia.

Passed January 31, 1863.

Preamble. Whereas, By the constitution for the state of West Virginia, ratified by the people thereof, it is provided that additional territory may be admitted into and become part of said state with the consent of the legislature thereof, and it is represented to the general assembly that the people of the county of Berkeley are desirous that said county should be admitted into and become part of the said state of West Virginia; now, therefore,

Polls to be opened. 1. Be it enacted by the General Assembly, That polls shall be opened and held on the fourth Thursday of May next at the several places for holding elections in the county of Berkeley, for the purpose of taking the sense of the qualified voters of said county on the question of including said county in the state of West Virginia.

Poll books. 2. The poll books shall be headed as follows, viz: "Shall the county of Berkeley become a part of the state of West Virginia," and shall contain two columns, one headed "aye" and the other "no," and the names of those who vote in favor of said county becoming part of the state of West Virginia shall be entered in the first column, and the names of those who vote against it shall be entered in the second column.

Superintendence 3. The said polls shall be superintended and conducted according to the laws regulating general elections, and the commissioners superintending the same at the court house of the said county, shall within six days from the commencement of the said vote examine and compare the several polls taken in the county, strike therefrom any votes which are by law directed to be stricken from the same, and attach to the polls a list of the votes stricken therefrom and the reasons for so doing. The result of the polls shall then be ascertained, declared and certified as follows: The said commissioners shall make out two returns in the following form, or to the following Form of returns. effect:—"We, commissioners for taking the vote of the qualified voters of Berkeley county on the question of including the said county in the state of West Virginia, do hereby certify that the polls for that purpose were opened and held the fourth Thursday of May, in the year eighteen hundred and sixty-three, within said county pursuant to law, and that the following is a true statement of the result as exhibited by the poll books, viz: for the county of Berkeley becoming part of the state of West Virginia, —— votes; and against it, —— votes. Given under our hands this —— day of ——, 1863;" which returns written in words, not in figures, shall be signed by the commissioners; one of said returns shall be filed in the clerk's office of the said county, and the other shall be sent under the seal of the secretary of this commonwealth within ten days from the commencement of the said vote, and the governor of this state, if of opinion that the said vote has been opened and held, and the result ascertained and certified pursuant to law, shall certify the result of the same under the seal of this state to the governor of the said state of West Virginia.

Where said returns are to be filed.

4. If the governor of this state shall be of opinion that the said polls cannot be safely and properly opened and held in the said county of Berkeley on the fourth Thursday of May next, he may by proclamation postpone the same, and appoint in the same proclamation or by one to be thereafter issued another day for opening and holding the same.

Governor may postpone opening of polls.

5. If a majority of the votes given at the polls opened and held pursuant to this act be in favor of the said county of Berkeley becoming part of the state of West Virginia, then shall the said county become part of the said state of West Virginia when admitted into the same with the consent of the legislature thereof.

When said county may become part of the new state.

6. This act shall be in force from its passage.

Commencement.

Chap. 55.—An ACT for the relief of Solomon Parsons, of the county of Tucker.

Passed February 3, 1863.

1. Be it enacted by the General Assembly, That the auditor of public accounts, be, and is hereby directed to issue his warrant in favor of Solomon Parsons, for the sum of twenty-seven dollars and fifty-four cents, to be paid out of any moneys in the treasury, not otherwise appropriated; said sum of money being the amount paid into the treasury by said Solomon Parsons as taxes upon license for the years eighteen hundred and sixty-one and sixty-two, which license, owing to repeated raids of rebel soldiers into the county of Tucker, he has been prevented from using.

Auditor to issue his warrant.

2. This act shall be in force from its passage.

Commencement.

Chap. 56.—An ACT changing a place of voting in the county of Jackson.

Passed February 3, 1863.

1. Be it enacted by the General Assembly, That the place of voting known as the Sandyville precinct, in the county of Jackson, be, and the same is hereby changed to the house of Warrin Reeds in

Change of place of voting.

said county, and that hereafter it shall be lawful to open polls for voting at the house of said Warrin Reeds instead of the Sandyville precinct.

Commencement. 2. This act shall be in force from its passage.

CHAP. 57.—An ACT to regulate the election of officers by the Council of the city of Wheeling.

Passed February 3, 1863.

All officers to be elected by joint ballot. 1. Be it enacted by the General Assembly of Virginia, That all officers which now are, or hereafter may be, required by acts of the legislature to be elected by the council of the city of Wheeling, shall be elected by joint ballot of the first and second branches of said council, a quorum of each branch being present, or in such other mode as shall be prescribed by the ordinances of said city.

Commencement. 2. This act shall be in force from its passage.

CHAP. 58.—An ACT to confer upon the President of the second branch of the Council of the City of Wheeling the power to administer oaths.

Passed February 3, 1863.

President to administer oaths. 1. Be it enacted by the General Assembly of Virginia, That the president of the second branch of the council of the city of Wheeling, for the time being, shall be and he is hereby constituted a justice of the peace so far as administering oaths is concerned within the limits of the said city: provided he shall not sit as a justice in the county court of Ohio county.

Commencement. 2. This act shall be in force from its passage.

CHAP. 59.—An ACT for the relief of Henry Snider.

Passsed February 3, 1863.

Henry Snider released from fine. 1. Be it enacted by the General Assembly of Virginia, That Henry Snider, of Marshall county, be and he is hereby released from the payment of a fine of one hundred dollars, assessed against him by the county court of said county of Marshall at the November term, eighteen hundred and fifty-nine, of said county court.

Commencement. 2. This act shall be in force from its passage.

CHAP. 60.—An ACT to provide for the payment of certain volunteers in companies A and B, of the 10th Virginia Regiment Volunteer Infantry, for services rendered not paid for.

Passed February 3, 1863.

1. Be it enacted by the General Assembly, That the auditor of public accounts, be, and the same is hereby authorized to pay out of the treasury, out of any moneys not otherwise appropriated, a sum sufficient to pay, at the rate of thirteen dollars per month, to James Smallridge, William Smallridge, and William Hyre, of company B, tenth Virginia regiment volunteer infantry; also, to James Pickens and Thomas Cunningham, of company A, of said regiment, for actual services rendered as state volunteers, from the time they were sworn into the state service to the time when the same were mustered out of the service by an officer of the United States, because of over age, receiving no pay for faithful services rendered. **Auditor authorized to pay certain volunteers.**

2. Provided, That on applications for pay by any of said volunteers for any such service rendered, that the same shall be required (by either themselves, heirs, agents, or attorneys, as the case may be,) to furnish satisfactory evidence to the governor, of the time and faithful performance rendered in the volunteer service of the state by each volunteer so applying for pay, and when the governor shall be satisfied, upon such evidence as may be produced, that any of the said volunteers are entitled to pay for services so rendered, that he may order the same to be paid in accordance with the provisions of this act, and said order shall be a sufficient voucher to the auditor for any such moneys paid by him. **Proviso.**

3. This act shall be in force from its passage. **Commencement.**

CHAP. 61.—An ACT imposing a Tax on Dogs.

Passed February 3, 1863.

1. Be it enacted by the General Assembly, That it shall be lawful for the several county courts of this commonwealth, all the magistrates being first summoned for this or any other purpose, and a majority being present, to levy a tax on dogs owned or kept in their respective counties; and it shall be the duty of the commissioner of the revenue, provided the county courts shall so order, of the respective counties, to list annually all dogs in their districts and make return thereof to said courts, and the names of the owners arranged in alphabetical order, at the May or June terms of said courts. **To impose a tax on dogs.** **Proviso.**

2. Every house-keeper may be allowed one dog free of tax, and for every additional dog there shall be a tax of not less than one nor more than two dollars. **Housekeepers allowed one dog.**

3. The taxes so levied shall be paid by the persons respectively in whose names the dogs shall be listed; and the owner or occupier **By whom taxes are to be paid.**

of any house, lot, or plantation, about or upon which any dog may be kept or permitted to remain, shall be deemed, for the purposes of this act, the owner of such dog or dogs.

Fine.

4. If any person shall conceal his dog or send him to any place for the purpose of avoiding the tax, he shall pay a fine of five dollars, recoverable before any justice of the peace for the county, with costs.

Number of dogs to be disclosed on oath.

5. Every person when called on by the commissioner of his district, shall disclose on oath the number of dogs owned by him, or kept or permitted to remain about any house, or upon any lot or plantation in his occupancy or under his control; and such oath shall be administered by the commissioner.

How taxes collected and accounted for.

Duty of courts.

6. The taxes imposed upon dogs under this act, shall be collected and accounted for by the sheriffs of the respective counties, as county levies are by law directed to be collected and accounted for; and to this end it shall be the duty of the courts on or before the July term of each year to cause a list to be delivered to the sheriffs, containing the names of all persons charged with a dog tax, and showing the amount assessed severally against each.

Lists.

Demand.

Duty of constables.

Fine.

7. The courts of the several counties shall cause a list or lists containing the names of all persons failing to pay the dog tax assessed against him to be delivered to the constables of the several districts in which they respectively reside, with the number of dogs listed to, and the amount of tax assessed severally against each, for which such constable shall give his official receipt to the court, and it shall be the duty of the constable upon receiving such list forthwith to make a demand upon the delinquent party for the payment of such tax, and upon the failure to pay over the tax that may be assessed against such delinquent party, it shall be the duty of the constable forthwith to search out and kill every dog in respect to the tax on which the owner shall be delinquent. Any person who shall conceal a dog for the purpose of avoiding the provisions of this section shall pay a fine of ten dollars, recoverable before any justice in and for the county, with costs.

Returns, how to be made.

8. Every such sheriff or constable receiving such lists as are mentioned in the two preceding sections, shall settle and pay over, on or before the first day of January of each year, to the persons appointed to receive the same, all moneys due from the said tax on dogs of the preceding year, after deducting the delinquents and commission of seven and a half per centum; and they shall make due return to the county courts of the March term of each year, of the manner in which they have discharged their duties respecting the same, and shall be liable for the tax assessed upon every dog enumerated in such lists as they shall fail to return a satisfactory account of to the court.

9. The constable shall receive fifty cents for every dog they may kill under the provisions of the eighth section, to be paid out of the dog tax, or county levy, and they and their securities shall be liable on their official bonds, upon motion in said courts, for any money received by them, or which they may be liable to pay by virtue of this act.

Fee for killing dogs. How paid.

10. The commissioners of the revenue and clerks shall be allowed a reasonable compensation for their labors in listing and furnishing copies of list to the sheriffs and constables, to be fixed by the courts of the several counties.

Fee for labor in listing and furnishing copies of lists.

11. The money arising from the said tax on dogs, shall, after defraying the expenses of the execution of the said law, so far as may be necessary, shall, by an order of the county court, upon satisfactory evidence be applied to the payment of the owners of all sheep killed by dogs: provided however, that applicants applying to be paid for sheep so killed, shall be required to state under oath, that the same was not killed by their own dogs; the money remaining shall be applied to county purposes.

How money arising from dogs disposed of. Proviso.

12. This act shall be in force from its passage.

Commencement.

CHAP. 62.—An ACT to amend and re-enact an act passed the 28th day of March, 1861, amending and re-enacting the seventh section of the one hundred and sixty-fifth chapter of the Code.

Passed February 3, 1863.

1. Be it enacted by the General Assembly of Virginia, That the seventh section of the one hundred and sixty-fifth chapter of the code of Virginia be amended and re-enacted so as to read as follows:

Section seven of chapter 165 amended and re-enacted.

"§7. Such attorney in any county or corporation court shall be allowed by the court, such sum as it deems reasonable for public service (for which no other fee or reward is allowed by law) which shall be chargeable to such county or corporation, and in the circuit court shall be allowed by it, where the attorney has no annual salary, such sums as it deems reasonable, not exceeding in one year, one hundred and fifty dollars in the circuit court of the county and city of Norfolk, and one hundred dollars in any other circuit court, except that additional allowances may be made by such courts for services rendered at special terms, and except that the attorney for the circuit court of the city of Richmond shall hereafter receive annually the sum of five hundred dollars; and except also, that the attorneys for the commonwealth for the circuit court of Ohio county shall hereafter receive annually the sum of two hundred and fifty dollars, to be paid half yearly as the present allowance is directed to be paid."

All acts or parts of acts inconsistent with the provisions of this act repealed.

2. All acts and parts of acts coming in conflict with the provisions of this act, are hereby repealed.

Commencement.

3. This act shall be in force from its passage.

CHAP. 63.—An ACT for the relief of the heirs of William P. Rathbone, deceased.

Passed February 3, 1863.

Preamble.

Whereas, William P. Rathbone, late of Wood county, deceased, omitted from his last will any devise or bequest of the bulk of his estate, whereby the same has descended and passed, under the provisions of the one hundred and twenty-third chapter of the code of Virginia, to his surviving children and the descendants of his deceased children in parcenary; and whereas, a portion of his real estate so undevised, consists of one equal undivided third part of about six hundred acres of land, situated in Wirt county, on the Little Kanawha river and Burning Spring run, whereof two equal undivided third parts were by said decedent in his life time, granted and conveyed to his sons J. Castelli Rathbone and John V. Rathbone, who have since by deeds, duly recorded in Wirt county, bearing date on the second day of January, in the year one thousand eight hundred and fifty-four, made partition as between themselves, so that each is now owner of two equal undivided third parts of a designated moiety of the said six hundred acres of land; and whereas, the said land is the principal locality of petroleum yet discovered in this state, and during the life time of the said decedent he joined with his sons above named, in several leases of oil rights, having still about eighteen years to run, on various parts of the said land, which consists of detached parcels, and it is unknown whether extensive portions of the said land, on which no wells have yet been bored, will yield petroleum, or in what quantities; and whereas, the heirs of the said decedent comprise children, grandchildren and great grand children, some of the second, and all of the last being minors under the age of twenty-one years, and residing in the state of New York and in England; and whereas, a partition in kind of the said land cannot be equitably made, and a sale of the same for the purpose of effecting a partition would be injurious to the interests of all the said heirs, and particularly of said minors, and unless some arrangement can be speedily made by which the petroleum and other products of the said land can be availed of, all of them will remain without any consideral increase therefrom and the public be deprived of the benefits of a valuable production; and whereas, the said John V. Rathbone heretofore agreed to grant and convey to Johnson N. Camden and other parties hereinafter named, one-half of his undivided two-thirds of a moiety of the said land, all of whom, except the said Camden and John J. Jackson, jr., are now in the service of the so-called confederate states, or voluntarily residing within their actual jurisdiction and yielding them allegiance, the greater portion of their agreed purchase money being unpaid, and their purchase subject to sale under their vendor's lien; and whereas, the adult heirs of the said decedent, including the said J. Castelli Rathbone and John V. Rathbone, and the guardian and father and grand-father of the said minor heirs, acting on this behalf so far as he may, as to their respective interests in the said land, and the said J. Castelli Rathbone as to his undivided two-thirds of a moiety of the said land, have agreed to form and constitute a joint stock company for the better management and improvement of their interests and estate in said land; and whereas, the courts cannot grant adequate relief in the premises, therefore,

1. Be it enacted by the General Assembly of Virginia, That James Cook, John R. Murdock and Hugh P. Dills, are hereby appointed commissioners to set off by metes and bounds, and to allot to the said John V. Rathbone and his said vendees, to-wit: Johnson N. Camden, John J. Jackson, jr., William J. Bland, William L. Jackson, Gideon D. Camden, R. S. Andrews and B. H. Byrne, having regard to quantity and quality and estimated value, two equal undivided third parts of that moiety of the above described six hundred acres of land, his interest in which the said J. Castelli Rathbone partitioned, granted and released to the said John V. Rathbone, as aforesaid, and in a like manner set off and allot to the Rathbone Petroleum Company, hereby incorporated, the residue of the said six hundred acres of land. Commissioners.

2. Upon the completion of the partition and allotment hereby authorized and directed, the said commissioners shall cause to be prepared a sufficient deed or deeds granting and assuring to the parties to whom said land shall be so partioned and allotted, their respective portions and parcels thereof with proper covenants of warranty and relinquishment of dower; upon the execution and acknowledgment for record whereof by or on part of all the adult heirs of the said decedent, their wives and husbands, and by the commissioner first named in the preceding section, who is also appointed a commissioner for this latter purpose for and on behalf of all minor heirs of the said decedent, and also for and on behalf of the vendees of the said John V. Rathbone, their heirs and assigns, to-wit: Johnson N. Camden, John J. Jackson, jr., William J. Bland, William L. Jackson, Gideon D. Camden, R. S. Andrews and B. H. Byrne, the partition and allotment hereby authorized and directed shall be binding in law and equity on all the parties thereto, but without prejudice to the rights of any other person or persons. Commissioners to make deeds.

3. The said heirs, to-wit: J. Castelli Rathbone, John V. Rathbone, Samuel B. Rathbone, William Van Allen Rathbone, Ellen S. Frost, (wife of Daniel Frost,) Rathbone Van Winkle, Godwin Van Winkle, Mary V. Blackford, (wife of J. Graham Blackford,) Hoffman Atkinson, Edward S. Atkinson, Jerome Gill Atkinson, George M. Atkin-

Rathbone Petroleum Company incorporated.

son, John H. Morrison, Mary A. Morrison and Richard R. Morrison, their respective executors, administrators and assigns, are hereby incorporated into a joint stock company by the name of the Rathbone Petroleum Company, for the purpose of raising to the surface, manufacturing, preparing for and transporting to market, selling and otherwise disposing of the mineral and other products of their interest and estate in the said land, and may devise and lease for terms not exceeding twenty years, any parts or parcels of their said land, with the privilege to their lessee of boring for and obtaining therefrom petroleum and other products thereof, reserving the rents in kind or otherwise. The said company shall be governed by the provisions of the fifty-sixth and fifty-seventh chapters of the code of Virginia, (excepting the thirty-second and the first clause of the thirty-fifth section of the latter,) so far as the same are applicable and are not inconsistent with any provisions of this act.

Capital stock.

4. The capital stock of the said company shall consist of one thousand and fifty shares of one hundred dollars each, which shall be apportioned and assigned as follows, to-wit: to the said J. Castelli Rathbone, six hundred shares; to the said John V. Rathbone, Samuel B. Rathbone, William Van Allen Rathbone and Ellen S. Frost, each seventy-five shares; to the said Rathbone Van Winkle, Godwin Van Winkle and Mary V. Blackford, each twenty-five shares; to Hoffman Atkinson, fifteen shares, and to John P. Atkinson, who is hereby appointed a trustee for the purposes of this act, the residue of the said shares, to have and hold the same in trust for his minor children and grand children until they respectively attain the age of twenty-one years, and then to assign and transfer to each the shares owned by him or her, or in the event of the death of either before attaining such age, then to assign and transfer the shares of such decedent to his or her heirs, executors or administrators, that is to say: he shall hold in trust as aforesaid, for the use and benefit of his children, the said Edward S. Atkinson, Jerome Gill Atkinson and George M. Atkinson, each fifteen shares, and of his grand children, the said John A. Morrison, Mary A. Morrison and Richard R. Morrison, each five shares, and the said company shall have power from time to time, by a majority of two-thirds of the votes cast at any annual or special meeting of the stockholders thereof, to increase their capital stock by the addition of so many shares as the same majority may agree to allow and issue for any portion or portions of the said six hundred acres of land, not theretofore owned by them, which may be duly granted and conveyed to them, and may hold and use the land so acquired, for the purposes of this incorporation. At all general meetings and elections each stockholder may, in person or by proxy, cast one vote for each share of stock owned by him or her, and the said trustee may in like manner cast one vote for each share of stock held by him in trust, as aforesaid.

5. For the purpose of facilitating the transportation of their productions and manufactures to market, the said company may procure, own and use such steam and other vessels and vehicles as they may

deem necessary; they may also subscribe for, purchase and own such amount of the capital stock of any company incorporated for the purpose of improving the navigation of the Little Kanawha river, or for constructing a railroad or turnpike to or from the land owned by them, as may be authorized by two-thirds of the votes cast at any annual or special meeting of the stockholders, but the said company shall not purchase or hold any other land than is herein authorized, except so much as may be necessary for sites for their manufactories, workshops, warehouses, yards for the storage of their products, and wharves for the use of the vessels owned or employed by them.

Said company authorized to use steam and other vessels and vehicles necessary for their business.

6. This act shall be in force from its passage, but is to be subject to be altered, amended or repealed by any future legislature.

Commencement. May be altered, amended or repealed.

Chap. 64.—An ACT imposing Taxes for the Support of the Government.

Passed February 3, 1863.

TAXES.

1. Be it enacted by the General Assembly, That the taxes on the persons and subjects in this act mentioned, or required by law to be listed or assessed shall be, yearly, as follows:

Taxes.

On Lands and Lots.

On tracts of lands and lots, with the improvements thereon, not exempt from taxation, thirty cents on every hundred dollars value thereof; and herein shall be included all tracts of lands and lots, with the improvements thereon, not exempt from taxation, of incorporated joint stock companies, savings institutions and insurance companies.

Amount of taxation on real property not exempt.

On Personal Property.

2. On all of the personal property, moneys and credits required by law to be listed and not exempt from taxation, except slaves, thirty cents on every hundred dollars value thereof; and herein shall be included all the capital invested or used in any manufacturing business except gas companies, where the assessment shall be on the value of such property invested or employed in any trade or business except agriculture, for which no license is required, and all the personal property and moneys of incorporated joint stock companies, except the moneys and personal property that constitute part of the capital of the banks, and except the moneys and personal property of savings institutions and insurance companies which have declared dividends within one year preceding the first day of February; and the words "moneys and credits" shall be construed to include all moneys and credits owned by any resident in this state, whether such moneys or credits are within or without the state.

Tax on personal property not exempt, and on monies and credits.

On Slaves.

3. On every slave over twelve years of age, whether exempted from county levy in consequence of bodily infirmity or not, ninety cents; and herein shall be included all slaves over twelve years of age, owned or hired by any company, institutions or persons whatsoever.

On slaves.

On Free Negroes.

On free negroes.

4. On every male free negro who has attained the age of twenty-one years, sixty cents.

White Males.

White males.

5. On every white male inhabitant who has attained the age of twenty-one years, sixty cents.

On Public Bonds.

Public bonds.

6. On the interest or profit which may have been received by any person, or converted into principal so as to become an interest bearing subject, or otherwise appropriated, within the year next preceding the first day of February of each year, arising from bonds and certificates of debt of this or any other state or country, or of any corporation created by this or any other state, whether the stock of such company be exempt from taxation or not, five per centum.

Dividends of Savings Institutions and Insurance Companies.

Dividends of savings institutions and insurance companies.

7. On the dividends declared within the year preceding the first day of February, by savings institutions and insurance companies, to be paid by such institutions and companies into the treasury respectively, fiae per centum.

On Incomes and Fees.

Incomes and fees.

8. On the income or fees received during the year preceding the first day of February of each year, in the consideration of the discharge of any office or employment in the service of the state, or in consideration of the discharge of any office or employment in the service of any corporation, or in the service of any company, firm or person, except where the service is that of a minister of the gospel, three-fourths of one per centum if the same be more than two hundred and fifty dollars and not more than five hundred dollars, one per centum if the sum be more than five hundred dollars and not more than a thousand dollars; and one and a half per centum if the sum be over one thousand dollars. The tax payable under this section by an officer of the government receiving a salary out of the treasury, shall be deducted at the time the salary is audited and paid.

Tax payable by officer of government to be deducted at time of payment of salary.

Bridges and Ferries.

Toll bridges and ferries.

9. On the yearly rent or annual value of toll bridges and ferries, other than those toll bridges and ferris exempt by their charter from taxation, four and a half per centum.

ON LICENSES.

Ordinaries.

10. The tax on licenses shall be as follows:

Ordinaries and houses of public entertainment.

On a license to keep an ordinary or house of public entertainment, thirty dollars; and if the yearly value of such house and furniture exceeds one hundred dollars and is less than two hundred dollars, the tax shall be forty dollars; and if the yearly value thereof exceeds two hundred dollars, there shall be added to the last mentioned sum, twelve per centum on so much thereof as exceeds two hundred dollars.

Private Entertainmeut and Houses of Public Resort.

11. On a license to keep a house of private entertainment or a private boarding house, five dollars; and if the yearly value of such house and furniture exceeds fifty dollars and is less than one hundred dollars, the tax shall be ten dollars. If the yearly value thereof exceeds one hundred dollars, there shall be added to the last mentioned sum, eight per centum on so much thereof as exceeds one hundred dollars. But no house shall be deemed a private boarding house with less than five boarders. **Houses of private entertainment and public resort.**

Eating Houses.

12. On every license to keep a cook shop or eating house, fifteen dollars; and in addition thereto twelve per centum on so much of the yearly value thereof as exceeds one hundred dollars. **Cook shops and eating houses.**

Bowling Alleys and Billiard Tables.

13. On every license permitting a bowling alley or saloon to be kept for a year, fifty dollars; provided that where there is more than one such alley kept in any one room, fifteen dollars each shall be charged for the excess over one. **Bowling alleys.**

14. And on every license permitting a billiard table to be kept for a year, one hundred dollars; provided that where there is more than one such table kept in any one room, fifty dollars each shall be charged for the excess over one table; provided that if such billiard table, bowling alley or saloon is not kept open more than four months in any one year, the taxes thereon shall be only one-half of these rates. **Billiard tables.**

Bagatelle Tables.

15. On every license permitting a bagatelle or other like table to be kept for one year or any less time, twenty dollars for the first, and if more than one, ten dollars for the second, and five dollars for each additional table kept in the same house. **Bagatelle tables.**

Livery Stables.

16. On every license to a keeper of a livery stable, seventy-five cents for each stall thereof; and therein shall be included as stalls, such space as may be necessary for a horse to stand, and in which a horse is or may be kept. **Livery stables.**

Distilleries.

17. On every license to the proprietor of a distillery, if a beginner, the tax shall be fifteen dollars; and if said distillery is to be kept in operation as much as four months in the year, the tax shall be twenty-five dollars; if for six months, thirty dollars; if for nine months, forty-five dollars; if for a longer time than nine months, seventy-five dollars; and if such distillery has been kept in operation as much as four months in the year next preceding the time of obtaining such license, the proprietor thereof shall pay, in addition to the tax imposed on beginners, four-tenths of one per centum on the amount of sales of such distillery for the twelve months next preceding the time of obtaining such license. **Distilleries.**

Merchants.

Merchants.

18. On every license to a merchant or mercantile firm, where a specific tax is to be paid, forty-five dollars; provided that if the capital employed by said merchant or firm be shown by affidavit to be less than five hundred dollars, the tax to be paid shall be eight dollars; but this provision shall not authorize any such person to sell wine, ardent spirits or a mixture thereof; and when the tax is in proportion to the sales, if the table sales shall be under one thousand and one dollars, the tax shall be fifteen dollars; if one thousand and one and under fifteen hundred dollars, eighteen dollars; if fifteen hundred dollars and under twenty-five hundred dollars, twenty-four dollars; if twenty-five hundred dollars and under five thousand dollars, thirty-six dollars; if five thousand dollars and under ten thousand dollars, fifty-seven dollars; if ten thousand and under fifteen thousand dollars, seventy-two dollars; if fifteen thousand and under twenty thousand dollars, eighty-four dollars; if twenty thousand and under thirty thousand dollars, one hundred and five dollars; if thirty thousand and under fifty thousand dollars, one hundred and fifty-six dollars; if over fifty thousand dollars, eight dollars for every ten thousand dollars excess over the said sum of fifty thousand dollars.

Sale of liquors.

Merchants' Permission to Sell Liquor.

License to sell liquor.

19. And in every case in which the license to a merchant or mercantile firm includes permission to sell wine, ardent spirits or a mixture thereof, porter, ale or beer, by wholesale and retail, or by retail only, if such merchant or firm (commencing business for the first time,) sell by wholesale and retail, an additional tax of seventy-five dollars; and if by retail only, thirty dollars; and if such license be to a merchant or mercantile firm to continue the privilege of selling wine, ardent spirits or a mixture thereof, porter, ale or beer, if by wholesale and retail, or by retail only, the tax shall be three-fourths of one per centum on the amount of such sales for the year next preceding the time of obtaining said license, in addition to the specific tax imposed on beginners; but such sales shall not be estimated in ascertaining the amount of a merchant's license.

Merchant Tailors, Lumber Merchants, Ice and Fuel Dealers.

Merchant tailors, lumber merchants and fuel dealers.

20. Merchant tailors, lumber merchants, dealers in coal, ice or wood, shall obtain license as merchants, and be assessed and taxed thereon as other merchants are by the preceding sections of this act, and shall be subject to like penalties for conducting such business without a merchant's license.

Commission or Forwarding Merchants, Tobacco Auctioneers or Ship Brokers.

Commission merchants, tobacco auctioneers or ship brokers.

21. The tax on every license to a commission merchant, forwarding merchant, tobacco auctioneer or ship broker, shall be thirty dollars, if commencing business; and if to continue such business after the same has been carried on for a year, the tax on such license shall be one and one-half per centum on the amount of commissions

received; and this tax shall be in addition to such tax as may be imposed on a license to such merchant or firm to sell any goods, wares or merchandize.

Auctioneers.

22. On every license to an auctioneer or vendue master commencing business, twenty dollars; and if the place of business be in a town containing a population of three thousand inhabitants, twenty-five dollars; if the population exceeds three thousand, an additional tax of twelve dollars for every thousand persons above that number, and at that rate for any fractional excess less than one thousand; and said specific tax shall in no case exceed three hundred dollars. On every license to an auctioneer who deals exclusively in real estate, one hundred and eighty-eight dollars, and he shall have the right to sell real estate at auction or otherwise. On every license to an auctioneer or vendue master to continue the business after the same has been carried on for a year, three-fourths of one per centum on the amount of taxable sales of such auctioneer or vendue master, but in no case shall the tax on such sales exceed seven hundred and fifty dollars; provided the tax to be paid by auctioneers for the sale of molasses and sugar, shall in no case exceed four hundred dollars for such sales; but the tax on sales of other articles shall not be affected by this provision. Auctioneers.

Sample Merchants.

23. On every license to a person selling goods by sample, card or otherwise, except at some storehouse or place of trade, one hundred and fifty dollars; but such sales made at such storehouse shall subject the person doing business at such storehouse to the tax required to be paid by a merchant. Sample merchants.

Patent Rights and Patent Medicines.

24. On every license to sell or barter patent rights, twenty dollars; patent, specific or quack medicines, if by wholesale, forty dollars; if by retail only, twenty dollars, unless he have a merchant's license. Patent rights. Patent medicines.

Agents for Renting Houses and Hiring Negroes.

25. On every license to a person engaged as agent for the renting of houses, twenty dollars. Agents for renting houses.

26. On every license to a person engaged as agent for the hiring of negroes, forty dollars. Agents for hiring negroes.

Stallions.

27. On every license to the owner of a jackass or stallion, for the service of which compensation is received, twice the amount of such compensation, when the charge is for such service by the season; and where such services are for less than a season, then twice what a commissioner may judge to be a reasonable charge therefor. The tax, however, in no case to be less than ten dollars. Stallions and asses.

Theatrical Performances; Sale of Refreshments in Theatres.

28. On every license permitting theatrical performances, public show, exhibition, concert or other performance in a public theatre or elsewhere, six dollars each week of such performances, notwithstanding the owner of the place of exhibition shall have paid the license tax above required. Theatrical performances.

Refreshments in theatres.

29. On every license permitting the sale of refreshments in a theatre during such performances, seventy-five dollars for each place of sale, and no abatement shall be made if the privilege be exercised for a period less than one year.

Public Rooms and Shows.

Public rooms.

30. On every license permitting the proprietor or occupier of any public room fitted for public exhibitions, to use the same for such purposes for a year, fifteen dollars, if such room be in a town of less than five thousand inhabitants; thirty dollars if in a town of more than five thousand and less than ten thousand inhabitants; and forty-five dollars in all other towns; and in addition to these rates there shall be added to said license tax thirty cents on every hundred dollars value of such rooms or buildings, provided such rooms and buildings are not otherwise assessed.

Shows.

31. On every license permitting any public show, exhibition or performance, except where held in a room licensed under the provisions of the preceding section of this act, if in a corporate town, or if within five miles thereof, for each time of performance, ten dollars: if elsewhere, five dollars; and for every exhibition of a circus, if within a corporate town, or within five miles thereof, thirty dollars; if elsewhere, fifteen dollars; and for every exhibition of a menagerie, if within a corporate town, or five miles thereof, thirty dollars; if elsewhere, fifteen dollars. All such shows, exhibitions and performances, whether under the same canvas or not, shall be construed to require a separate license therefor, and upon any such shows, exhibitions and performance being concluded, so that an additional fee for admission be charged, the same shall be construed to require an additional license therefor.

Porter, Ale and Beer.

Porter, ale or beer.

32. On every license to sell by retail, porter, ale or beer, when in a city or town the population of which is over eight hundred, fifteen dollars; and all other places, ten dollars, and if they continue for more than one year, an additional tax of three-fourths of one per centum on the amount of taxable sales.

Stock Brokers.

Stock brokers.

33. On every license to a broker who deals exclusively in stocks, one hundred and eighty-eight dollars; and he shall thereupon have the right to sell the said stocks at auction or otherwise.

Bank Note Brokers.

Bank note brokers.

34. On every license to a broker employing a capital of ten thousand dollars, or a less sum, two hundred dollars; on all sums over ten thousand dollars, two per centum on the capital employed.

Foreign Insurance Companies.

Foreign insurance companies.

35. On every license to an agent or sub-agent of any insurance company not chartered by this state, fifty dollars; and in addition thereto a tax of one-half of one per centum on the whole amount of premiums received and assessments collected by such agent or sub-agent or company within the state as prescribed by law.

Physicians, Dentists and Lawyers.

Physicians, dentists and lawyers

36. On every license to a physician, surgeon or dentist, five dollars; and on every license to an attorney-at-law, five dollars. If the yearly income derived from the practice of any such callings or profession during the year next preceding the time of obtaining such license shall exceed four hundred dollars, there shall be an additional tax on the excess, of three-fourths of one per centum, and this income shall be included in the license tax.

Daguerrean Artists.

Daguerrean gallery.

37. On every license to the owner of a daguerrean or such like gallery by whatsoever name it may known or called, if in a city or incorporated town of less than one thousand inhabitants, ten dollars; if more than one thousand inhabitants, thirty dollars; if elsewhere, eight dollars; and if the yearly income derived from the practice of said art exceeds five hundred dollars in any county, city or town, an additional tax of one and one-half per centum on such excess for the year next preceding the time of obtaining such license; and such tax shall be imposed whether an artist perform in a gallery or not.

Express Companies.

Express companies.

38. On every license to a person or company carrying on an express business for compensation, forty dollars; and in addition thereto, every such company shall make a return to the auditor of public accounts on the fifteenth day of January and July in each year of the total receipts of such company, on account of its operations within the state of Virginia within the six months preceding the first day of January and July of each year. Such returns shall be verified by the oaths of the agent and chief officers of such company, at its principal office or offices in this state, in the manner and according to the form prescribed by the said auditor, whether collected within or without the state. Such express companies shall pay on the total receipts so reported, a tax of four tenths per centum, except for the transportation of bank notes, for which the tax shall be one eighth of one per centum upon the amount of bank notes transported over one hundred miles at any one time, except notes sent by the banks and sheriffs of this commonwealth, and for failure to make such report or pay such tax, a penalty of six hundred dollars shall be imposed on the company so failing, to be recovered as other penalties are: provided, however, that no license to carry on the express business shall authorize any such company to do the business of a broker. Such license shall give the privilege throughout the state.

39. No express company shall pay any tax on bank notes forwarded for any resident citizen of this commonwealth, unless he be a broker dealing in bank notes.

Bank Dividends.

Bank dividends.

40. On the dividends declared by any bank incorporated by this state, the tax shall be five per centum upon the amount thereof, to be paid into the treasury by the bank. If the dividend be that of a

bank incorporated elsewhere, the tax shall be five per centum upon the amount thereof, to be assessed and collected as other taxes.

On Suits.

On suits.

41. When any original suit, attachment or other action is commenced in a circuit, county or corporation court, there shall be a tax of fifty cents; if it be an appeal, writ of error, or supersedeas in a district court, two dollars, and if in the court of appeals, two dollars and fifty cents.

On Seals.

Seals.

42. When the seal of a court, of a notary public, or the seal of the state is annexed to any paper, except in those cases exempted by law the taxes shall be as follows: for the seal of the state, two dollars; for the seal of a court or a notary public or any other seal, fifty cents; for any other seal, one dollar and fifty cents, except in cases of protests of bills or notes for one hundred dollars or smaller sums, in which cases the tax shall be fifty cents, and herein shall be included a tax on a scroll annexed to a paper in lieu of an official seal.

On Wills and Administrations.

Wills and administrations.

43. On the probate of every will or grant of administration, there shall be a tax of one dollar.

Deeds.

Deeds.

44. On every deed admitted to record, whether the same has been recorded before or not, which is admitted to record, there shall be a tax of one dollar.

Internal Improvement Companies.

Internal improvement companies.

45. Every railroad company or canal company shall hereafter report quarterly, on the fifteenth day of March, June, September and December in each year, to the auditor of public accounts, the number of passengers transported, and the aggregate number of miles traveled by them within this commonwealth, the gross amount received by such company for transportation of freight over such road or canal, or any part thereof, during the quarter of the year next preceding the first day of the month in which such report is made. Such company, whose road or canal is only in part within the commonwealth, shall report as aforesaid such portion only of such amount received for the transportation of freight, as the part of the said road or canal which is within this commonwealth, bears to the whole of such road or canal.

46. Such statement shall be verified by the oaths of the president and the superintendent of transportation, or other proper officer. Every company failing to make such report, shall be fined five hundred dollars. At the time of making such report, the company shall pay into the treasury, for every passenger transported, a tax at the rate of one mill for every mile of transportation of each of such passengers, and a tax of one-third of one per centum of such gross amount received for the transportation of freight. Every such company

paying such taxes, shall not be assessed with any tax on its lands, buildings, cars, boats or other property which they are authorized by law to hold or have. But if such company fail to pay such taxes at either of the terms specified therefor, then its lands, buildings, cars, boats and other property shall be immediately assessed under the directions of the auditor of public accounts, by any person appointed by him for the purpose, at its full value, and a tax shall at once be levied thereon as on real estate and other property, to be collected by any sheriff whom the auditor may direct, and such sheriff shall distrain and sell any personal property of such company, and pay such taxes into the treasury within three months from the time when such assessment is furnished to him.

Sale of Horses for profit.

47. On every license to buy or sell for others on commission or for profit, horses, mules, asses and jennets, cattle, sheep or hogs, ten dollars.

Sale of horses, mules, asses, jennets, cattle, sheep, or hogs.

Carriages and other Vehicles.

48. On every license to sell carriages, buggies, barouches, coaches, gigs, wagons, and such like vehicles, manufactured out of this state, forty dollars in each county or corporation.

On carriages and other vehicles.

Sale of Slaves.

49. On every license to buy or sell for others on commission or for profit, slaves, ten dollars; and on the yearly income derived from such business, an additional tax of one per centum.

Sales of slaves.

50. This act shall be in force from its passage.

Commencement.

CHAP. 65.—An ACT appropriating the Public Revenue for the fiscal year 1862-3, and a part of the fiscal year 1863-4.

Passed February 4, 1863.

1. Be it enacted by the General Assembly, That the surplus of all appropriations made prior to the thirtieth of September, eighteen hundred and sixty-two, and any and all moneys in the treasury not otherwise appropriated at the close of the fiscal year ending September thirtieth, eighteen hundred and sixty-two, as well as all moneys that shall come into the public treasury, from and after the thirtieth day of September, eighteen hundred and sixty-two, to the thirty-first day of December, eighteen hundred and sixty-three, shall constitute a general fund and be appropriated for the fiscal year eighteen hundred and sixty-two and sixty-three, and for the months of October, November and December, in the fiscal year eighteen hundred and sixty-three and sixty-four, as follows:

Appropriation of the public revenue for the fiscal year 1862-3, and a part of the fiscal year 1863-4.

To expenses of general assembly for the extra session commencing on the fourth day of December, eighteen hundred and sixty-two, including pay of officers, printing, stationery, and so forth, seventeen thousand dollars.

Expenses of general assembly

Salaries of officers of civil government.

To salaries of officers of civil government, twelve thousand five hundred dollars.

Judiciary.

To expenses of the judiciary, including salaries of the judges, attorneys of the commonwealth, mileage, and so forth, ten thousand dollars.

Criminal charges

To defray expenses of criminal charges, including witnesses, jurors, and jailor fees, six thousand dollars.

Contingent expenses of courts.

To contingent expenses of the courts of the commonwealth, five thousand dollars.

Convicts.

To expenses of convicts in jail or other places, including transportation, fifteen hundred dollars.

Lunatics.

To expenses of lunatics in jails or in asylums in other states, including transportation and salary, in part, of superintendent of asylum at Williamsburg, five thousand dollars.

Adjutant general

To salary of adjutant general, twelve hundred dollars.

Public printer.

To public printer, fifteen hundred dollars.

Elections.

To expenses of elections, two hundred dollars.

Commissioners of revenue.

To pay of commissioners of the revenue, ten thousand dollars.

Coronor's inquests.

To expenses of coroners' inquests, one hundred dollars.

Clerks in auditor's office.

To pay of clerks in auditor's office, fifteen hundred dollars.

Clerks in treasurer's office.

To pay of clerks in treasurer's office, two hundred dollars.

Clerks in adjutant general's office.

To pay of clerks in adjutant general's office, six hundred and twenty-five dollars.

Janitor.

To pay of janitor for executive's office, four hundred dollars.

Contingent expenses of auditor, treasurer, and secretary of the commonwealth.

To contingent expenses of the offices of the auditor, treasurer and secretary of the commonwealth, including stationery, fuel, postage, printing, books, and so forth, two thousand five hundred dollars.

To contingent expenses of the adjutant general's office, five hundred dollars.

Civil contingent fund.

To civil contingent fund, fifteen thousand dollars.

Expenses of convention.

To expenses of the convention which is to assemble in the city of Wheeling on the twelfth day of February, eighteen hundred and sixty-three, including the pay and mileage of its members, the compensation of its officers, its printing, stationery, fuel, and other necessary expenditures, and also including the expenses of holding any elections which may be ordered by said convention, seven thousand dollars.

Vaccine agent.

To salary of vaccine agent, five hundred dollars.

Principal of Linsley Institute

To the principal of Linsley Institute for the use of the building during the extra session of the general assembly, commencing December four, eighteen hundred and sixty-two, two dollars and fifty cents per day—one hundred and fifty-seven dollars and fifty cents.

Sick, wounded and dead soldiers belonging to Virginia regiments.

To defray expenses of transporting sick, wounded and dead soldiers belonging to Virginia regiments who are unable to pay their transportation from the fated field or hospital, to their homes, said fund to be at the disposal of the governor of the commonwealth, two thousand dollars.

To sergeant-at-arms of the house of delegates for expenses incurred in preparing the hall for the use of the house of delegates, including cleansing and replacing carpets, removing and replacing furniture, and use or hire of same, seventy-five dollars. Sergeant-at-arms of house of delegates.

To pay Mrs. Tompkins for extra labor in the hall of the house, fifty dollars. Mrs. Tompkins.

To expense of collecting together, putting in order and taking care of the arms of this commonwealth, to be allowed by the auditor, upon the certificate of the governor, one thousand dollars. Collecting and taking care of the arms of the commonwealth.

To the clerk of the senate, in addition to his present compensation, fifty dollars. Clerk of senate.

2. Be it further enacted, that no judge, attorney for the commonwealth, or other officer in state service, who has not taken the oath required by the ordinance for the reorganization of the state government, or who, after taking and subscribing such oath, shall, by any overt act or by writing or speaking, support or uphold or attempt to support or uphold the usurped government at Richmond, or the pretended government of the so-called confederate states, shall not be entitled to claim or receive any money by virtue of this act. Who not entitled to claim or receive any money by virtue of this act.

3. Be it further enacted, that the unexpended surplus of all appropriations made in the first section of this act, remaining in the treasury, on the first day of January, eighteen hundred and sixty-four, and all moneys that may remain in the treasury, by virtue of the provisions of the second section of an act passed February fourth, eighteen hundred and sixty-three, entitled "An act making an appropriation to the proposed new state of West Virginia," as also all moneys now due from the United States to the state for expenses incurred for military purposes (when collected and paid into the treasury by the governor,) shall constitute a general fund to defray such expenses authorized by law, as are not herein particularly provided for, and to defray the current expenses of the commonwealth for that portion of the fiscal year ending September thirtieth, eighteen hundred and sixty-four, not herein specifically provided for. What moneys shall constitute a general fund.

4. This act shall be in force from its passage. Commencement.

CHAP. 66.—An ACT authorizing the Governor to arrest disloyal persons as hostages.

Passed February 4, 1863.

Whereas, it is known to the General Assembly, That evil disposed persons and others under the influence and orders of the assumed rebel government, have made it a practice (and recently, too,) entered West Virginia and seized and carried away citizens into the so-called southern confederacy, and there have detained and imprisoned them without cause, and unless this system of kidnapping be promptly checked, such conduct will continue and increase to the manifest oppression of our loyal citizens, for remedy whereof, Preamble.

Who to be seized and held as hostages.

1. Be it enacted by the General Assembly of Virginia, That the governor of this commonwealth is hereby authorized and requested in all cases of the seizure of the persons of loyal citizens of this state by any parties acting under the authority of the so-called southern confederacy, the pretended state government at Richmond or other military organizations acting in sympathy or concert with them, or either of them, to seize and hold as hostages for the safe rendition of such person or persons so seized and held, so many persons of known disloyal sentiments as in his discretion may be necessary to effect said rendition.

Commencement.

2. This act shall be in force from its passage.

CHAP. 67.—An ACT to amend and re-enact the 7th section of the Ordinance passed June 19th, 1861, entitled "An Ordinance to authorize the apprehending of suspicious persons in time of war."

Passed February 4, 1863.

Section seven of the ordinance passed June 19, 1861, amended and re-enacted.

1. Be it enacted by the General Assembly, That the seventh section of the ordinance passed the nineteenth day of June, eighteen hundred and sixty-one, entitled "An ordinance to authorize the apprehending of suspicious persons in time of war," be amended and re-enacted so as to read as follows:

"§7. The powers vested in the governor by this ordinance shall be exercised only upon satisfactory evidence of the necessity of such arrest, based upon oath or affirmation."

Commencement.

2. This act shall be in force from its passage.

CHAP. 68.—An ACT transferring to the proposed State of West Virginia, when the same shall become one of the United States, all this State's interest in property, unpaid and uncollected taxes, fines, forfeitures, penalties and judgments, in counties embraced within the boundaries of the proposed State aforesaid.

Passed February 3, 1863.

Transfer of property.

1. Be it enacted by the General Assembly of Virginia, That all property, real, personal and mixed, owned by or appertaining to this state, and being within the boundaries of the proposed state of West Virginia, when the same becomes one of the United States, shall thereupon pass to and become the property of the state of West Virginia, and without any other assignment, conveyance, transfer or delivery than is herein contained; and shall include among other things not herein specified, all lands, buildings, roads and other internal improvements, or parts thereof situated within the said boundaries, and now vested in this state, or in the president and directors

of the board of the literary fund, or the board of public works thereof, or in any person or persons, for the use of this state to the extent of the interest and estate of this state therein; and shall also include the interest of this state, or of the said president and directors, or of the said board of public works, in any parent bank or branch doing business within the said boundaries; and all stocks of any other company or corporation, the principal office or place of business whereof is located within the said boundaries standing in the name of this state or of the said president or directors, or of the said board of public works, or of any person or persons, for the use of this state.

Taxes, fines, forfeitures, &c., &c., transferred.

2. Be it further enacted, That all unpaid and uncollected arrearages of taxes on lands, town lots, property tax, capitation tax, license tax, militia fines, fines imposed by courts, forfeitures and penalties, belonging to the state in the hands of sheriffs, collectors or individuals, in any or all of the counties embraced within the boundaries of the proposed state of West Virginia, as also all bonuses on the capital stock of any bank, taxes on the dividends declared by any bank, savings institution or insurance company; dividends on stock owned by the state, or by the board of public works, or the president and directors of the board of the literary fund, in any bank, bridge, or other corporation in any one of the counties aforesaid; also taxes on seals, deeds, wills, writs and other legal processes due from the clerks of the courts, notaries public or the secretary of the commonwealth; taxes on passengers and tonnage due from railroad companies, taxes on bank notes or other property transported by express companies within the counties aforesaid; also all fines, forfeitures and penalties incurred by railroads, express companies or other parties or persons within the counties aforesaid; also all judgments, decrees or penalties incurred by officers of the state, railroad or express companies, or other persons before or since the reorganization of the state government at the city of Wheeling; also all suits and their results now pending in the name of the board of public works, or of the president and directors of the board of the literary fund in any court of any of the counties aforesaid; also all taxes on lands, town lots, property tax, capitation tax, license tax, assessed in the counties aforesaid, and due the state for the year eighteen hundred and sixty-three, in the hands of officers of the state or individuals, together with all the rights of the state, or of the board of public works, or of the president and directors of the board of the literary fund to any and all moneys and claims in the counties aforesaid that may not be specifically mentioned in this act, but that rightfully belong to the state or corporations for the use of the state, shall be the property of the state of West Virginia, when the same shall become one of the United States.

3. It shall be the duty of all sheriffs or collectors of the public revenue, also of all presidents or other officers of railroad, express, bridge or internal improvement companies, presidents and other officers of banks, savings banks and insurance companies, clerks of

What moneys to be paid into the treasury of West Virginia.

courts, notaries public, the secretary of the commonwealth, and of individuals owing or having money in their hands due the state, or the board of public works, or the president and directors of the board of the literary fund, in any of the counties aforesaid, to pay the same into the treasury of the state of West Virginia, when the same shall become one of the United States.

Suits to be brought in the name of the state of West Virginia.

4. Be it further enacted, For the purpose of carrying this act into effect, that suits may be brought in the name of this commonwealth for the use of the state of West Virginia, when it becomes one of the United States on any bond or claim which shall pass to or become the property of the state of West Virginia by virtue of this act.

State of West Virginia to account with this state.

Proviso.

5. Be it further enacted, That if the appropriations and transfers of property, stocks and credits provided for by this act take effect, the state of West Virginia shall duly account for the same in the settlement hereafter to be made with this state: provided that no such property, stocks and credits shall have been obtained since the reorganization of the state government.

Duty of officers of state.

Duty of governor.

6. It shall be the duty of the auditor of public accounts, the secretary of state, the treasurer, and the adjutant general of this commonwealth to procure fit and proper blank books for the purpose, and cause to be transcribed therein true copies of all such records, official acts, orders, minutes and memoranda, and like copies of original papers upon which any such official action was based, which from its locality or general state interest appertains to and will be useful and advantageous to the state of West Virginia; and the officers aforesaid shall severally certify to the governor of this commonwealth the correctness of their respective copies; and it shall be the duty of the governor to certify to all whom it may concern, the official character of such officers so certifying under the great seal of this commonwealth, and deliver all such copies to the governor of West Virginia, when his election is officially declared, for the use of said state of West Virginia.

Commencement.

7. This act shall take effect when the proposed state of West Virginia shall become one of the United States.

CHAP. 69.—An ACT providing for placing a part of the Maryland and Ohio Turnpike under the supervision of the County Court of Marion.

Passed February 4, 1863.

A portion of the Maryland and Ohio turnpike placed under the supervision of the county court of Marion county.

1. Be it enacted by the General Assembly of Virginia, That so much of the Maryland and Ohio turnpike as runs between the town of Mannington in the county of Marion and to the point at which the said pike crosses the dividing line between the counties of Marion and Wetzel, be placed and the same is hereby placed under the

supervision and control of the county court of the said county, and the court of the said county is hereby empowered to lay off the said pike into precincts, and to place the same under supervisors, and the said road, when so precincted and placed under supervisors, shall be worked and controlled as county roads are worked and controlled by law: provided, that nothing herein contained shall be construed so as to transfer any interest which the state may have in the said pike.

Proviso.

2. This act shall be in force from its passage.

Commencement.

CHAP. 70.—An ACT directing in what manner the Commissioners of the Revenue in certain counties shall return their books.

Passed February 4, 1863.

Directing how commissioners of the revenue in certain counties shall return their books.

1. Be it enacted by the General Assembly of Virginia, That the commissioners of the revenue of this state residing in any of the counties within the limits of the proposed state of West Virginia, after having completed their books and assessments of license for the year eighteen hundred and sixty-three, and after having furnished the sheriffs of the said counties with the commissioners books and license lists, shall return the commissioners books and license lists now required by law, to be returned to the auditor of the state, to the auditor of the said proposed state of West Virginia, if the said state shall then be organized and admitted as one of the states of the United States. If at the time when these books are properly returnable to the auditor, the proposed state of West Virginia shall not be admitted as one of the United States, the commissioners of the revenue for the counties aforesaid, shall then return their books as now required by law.

2. This act shall be in force from its passage.

Commencement.

CHAP. 71.—An ACT to amend and re-enact the second and third sections of the third chapter of the Code of 1860.

Passed February 3, 1863.

The second and third sections of chapter three of the code of 1860 amended and re-enacted.

1. Be it enacted by the General Assembly of Virginia, That the second and third sections of the third chapter of the code of eighteen hundred and sixty, be amended and re-enacted so as to read as follows:

"§2. Whenever a citizen of this state, by deed in writing executed in the presence of and subscribed by two witnesses, and by them proven in the court of the county or corporation where he resides, or by open verbal declaration made in such court and entered of record, shall declare that he relinquishes the character of a citizen of this state and shall depart out of the same, such person shall, from the time of such departure, be considered as having exercised his right of expatriation so for as regards this state and shall thenceforth be deemed no citizen thereof.

"§3. When any citizen of this state, being twenty-one years of age, shall reside elsewhere, and in good faith become the citizen of some other state of this union, or the citizen or subject of a foreign state or sovereign, he shall not, while the citizen of another state, or the citizen or subject of a foreign state or sovereign, be deemed a citizen of this state; and any citizen of this state who shall, after the passage of this act, voluntarily levy war against the United States, or who shall adhere to the enemies of the same, or give them aid and comfort, or who shall, by writing or speaking, profess allegiance or fidelity to the so-called confederate states of America, or who shall resist or oppose by violence, or who shall by writing or speaking instigate others to resist or oppose by violence, the government of Virginia as reorganized by the convention which assembled at Wheeling on the eleventh day of June, eighteen hundred and sixty-one, shall be considered as having expatriated himself so far as regards this state, and shall thenceforth be deemed no citizen thereof."

Commencement.

2. This act shall be in force from its passage.

CHAP. 72.—An ACT making an appropriation to the proposed new State of West Virginia when the same shall become one of the United States.

Passed February 4, 1863.

Appropriation to the state of West Virginia.

1. Be it enacted by the General Assembly of Virginia, That the sum of one hundred and fifty thousand dollars, be, and is hereby appropriated to the state of West Virginia out of moneys not otherwise appropriated, when the same shall have been formed, organized and admitted as one of the states of the United States.

Additional appropriations.

2. Be it further enacted, That there shall be, and hereby is appropriated to the said state of West Virginia when the same shall become one of the United States, all balances, not otherwise appropriated, that may remain in the treasury, and all moneys not otherwise appropriated, that may come into the treasury up to the time when the said state of West Virginia shall become one of the United States: provided, however, that when the said state of West Virginia shall become one of the United States, it shall be duty of the auditor of this state, to make a statement of all the moneys that up to that time, have been paid into the treasury from counties located outside of the boundaries of the said state of West Virginia, and also of all moneys that up to the same time, have been expended in such counties, and the unexpended surplus of all such moneys shall remain in the treasury and continue to be the property of this state.

Proviso.

3. Be it further enacted, That the act passed May fourteenth, eighteen hundred and and sixty-two, making an appropriation of one hundred thousand dollars to the state of West Virginia, be, and the same is hereby repealed.

The act passed May 14, 1862, repealed.

4. This act shall be in force from its passage.

Commencement.

CHAP. 73.—An ACT for the relief of Greenville Harrison.

Passed February 4, 1863.

1. Be it enacted by the General Assembly of Virginia, That the auditor of public accounts be and hereby is directed to issue his warrant in favor of Greenville Harrison, for the sum of ninety-two dollars and seventy-five cents, to be paid out of any moneys in the treasury not otherwise appropriated, such sum being the amount justly due to said Harrison for services rendered by him as commissioner of the revenue for the county of Cabell in making out property books for the year eighteen hundred and sixty-two, which books were forcibly taken from said Harrison on the third day January, eighteen hundred and sixty-three, by rebel soldiers.

Auditor directed to issue his warrant in favor of Greenville Harrison.

2. This act shall be in force from its passage.

Commencement.

CHAP. 74.—An ACT for the relief of Theodore Davis.

Passed February 2, 1863.

1. Be it enacted by the General Assembly of Virginia, That Theodore Davis, be, and he is hereby released from the payment of a fine of two hundred dollars, imposed upon him by the circuit court of Doddridge county, at the spring term of eighteen hundred and sixty-two, for an assault upon one Jacob Trough, with intent to maim, disfigure and disable him, the said Trough.

Released from payment of a fine.

2. This act shall be in force from its passage.

Commencement.

CHAP. 75.—An ACT for the relief of James G. West.

Passed February 4, 1863.

1. Be it enacted by the General Assembly, That the auditor of public accounts be and hereby is directed to issue his warrant in favor of James G. West, for the sum of fourteen hundred and forty dollars and thirty cents, to be paid out of any moneys arising from suit or suits pending against the Baltimore and Ohio railroad company for damages done to the Maryland and Ohio turnpike road, and that the said James G. West and his securities be, and they are hereby released from the bond of the said James G. West as contractor on the Maryland and Ohio turnpike road.

Auditor directed to issue his warrant in favor of James G. West.

Released from bond.

2. This act shall be in force from its passage.

Commencement.

CHAP. 76.—An ACT authorizing the Auditor to regulate the compensation of Commissioners of the Revenue in certain cases.

Passed February 4, 1863.

Compensation allowed commissioners of the revenue.

1. Be it enacted by the General Assembly, That the auditor of public accounts is hereby authorized and directed to allow commissioners of the revenue in all counties, except those in which the said commissioners receive a fixed compensation, such additional compensation for the year eighteen hundred and sixty-three as will raise the salary of said commissioners of the revenue to an amount not exceeding that paid them for the year eighteen hundred and sixty-two.

Commencement.

2. This act shall be in force from its passage.

CHAP. 77.—An ACT to incorporate the Little Kanawha Navigation Company.

Passed February 4, 1863.

Who authorized to open books of subscription.

1. Be it enacted by the General Assembly, That it shall be lawful to open books, under the superintendence of John V. Rathbone, P. G. Van Winkle, J. N. Camden, James Cook, Moses Kinchelo, Daniel Wilkinson, E. C. Hopkins, Jonathan Weaver, Charles Chaddoc, John Wear, and James A. Williamson, or any three of them, at Parkersburg, in the county of Wood, at Newark, Elizabeth, and Rathbone, in the county of Wirt, and at Glenville, in the county of Gilmer, for receiving subscriptions to the capital stock of the company hereby incorporated for the purpose of improving the navigation of the Little Kanawha river and its branches.

Capital stock.

2. The capital stock of said company shall consist of four thousand shares of twenty-five dollars each, and whenever five hundred shares are subscribed, the subscribers, their executors, administrators and assigns, are hereby incorporated by the name of the Little Kanawha Navigation Company, and shall be governed by the provisions of the fifty-sixth, fifty-seventh and sixty-first chapters of the code of Virginia, so far as the same are applicable and not inconsistent with this act. The county courts of Wood, Wirt, Ritchie, and Gilmer counties shall have the power to subscribe. At all general meetings and elections each stockholder may in person, or by proxy, cast one vote for every share of stock owned by him.

Name of company.

Number of votes authorized to be cast by stockholders.

Improvements.

3. The said company shall have power to improve the navigation of said river, and of Hughes' river, by locks and dams, sluices, canals, or other usual modes of improvement or by the combination of any two or more of them. They shall commence their improvements at or near the mouth of said river, and prosecute the same toward the head, so far as may be deemed practicable, and their resources will permit, and may in like manner improve Hughes' river so far up the same as they may deem proper, when their main improvement has

reached the mouth thereof; they may enter and condemn lands for the purposes of their improvements, under the provisions of the said fifty-sixth chapter of the code of Virginia, and shall have the benefit of all or any acts declaring the said river a navigable highway; they may charge and receive such tolls for the use of their improvement as may be fixed by the board of public works, or by law.

Tolls.

4. The said company shall have power to borrow money from time to time, not exceeding in the aggregate the amount of their capital stock; to issue their bonds or other proper securities for the same, and to pledge their works and property by mortgage or deed of trust for the payment thereof and of the interest to accrue thereon, but in the event of a sale under such mortgage or deed of trust, all bonds or notes then outstanding, issued in payment for work done or materials furnished on or for their improvement, and so expressed to be on their face, shall be first paid out of the proceeds of any such sale.

Power to borrow money.

5. The said company shall commence the said improvement within two years after the passage of this act and complete the said improvement up the said Kanawha river to the mouth of the west fork of said river, within eight years after the passage of this act, and if the said company fails to complete the improvement from the said west fork to Glenville, in Gilmer county, within ten years after the passage of this act, the right as a company to said Kanawha river, shall be forfeited and no longer to exist above the mouth of the said west fork of the Kanawha, but shall have the right granted in this act to continue as a company from the mouth of the said Kanawha to the mouth of the said west fork.

In what time improvements to be commenced.

6. This act shall be in force from its passage.

Commencement.

CHAP. 78.—An ACT giving consent to the admission of certain counties into the new State of West Virginia, upon certain conditions.

Passed February 4, 1863.

1. Be it enacted by the General Assembly of Virginia, That at the general election on the fourth Thursday of May, one thousand eight hundred and sixty-three, it shall be lawful for the voters of the district composed of the counties of Tazewell, Bland, Giles and Craig, to declare by their votes whether said counties shall be annexed to and become a part of the new state of West Virginia; also, at the same time, the district composed of the counties of Buchanan, Wise, Russell, Scott and Lee, to declare by their votes whether the counties of the said last named district shall be annexed to and become a part of the state of West Virginia; also, at the same time, the district composed of the counties of Alleghany, Bath and Highland, to declare by their votes, whether the counties of such last named districts shall be annexed to and become a part of the state of West Virginia;

Lawful for the voters of Tazewell, Bland, Giles and Craig to declare by their votes whether said counties shall be annexed to West Virginia.

Also the counties of Buchanan, Wise, Russell, Scott and Lee.

Also the counties of Alleghany, Bath and Highland.

Also the counties of Frederick and Jefferson.

also, at the same time, the district composed of the counties of Frederick and Jefferson, or either of them, to declare by their votes, whether the counties of the said last named district shall be annexed to and become a part of the state of West Virginia; also, at the same time, the district composed of the counties of Clarke, Loudoun, Fairfax, Alexandria and Prince William, to declare by their votes, whether the counties of the said last named district shall be annexed to and become a part of the state of West Virginia; also, at the same time, the district composed of the counties of Shenandoah, Warren, Page and Rockingham, to declare by their votes, whether the counties of the said last named district shall be annexed to and become a part of the state of West Virginia; and for that purpose there shall be a poll opened at each place of voting in each of said districts, headed "For Annexation," and "Against Annexation." And the consent of this general assembly is hereby given for the annexation to the said state of West Virginia of such of said districts or either of them, as a majority of the votes so polled in each district may determine: provided, that the legislature of the state of West Virginia shall also consent and agree to the said annexation, after which all jurisdiction of the state of Virginia over the districts so annexed shall cease.

Also the counties of Clarke, Loudoun, Fairfax, Alexandria and Prince William.

Also the counties of Shenandoah, Warren, Page & Rockingham.

Polls to be opened.

Consent.

Duty of governor.

2. It shall be the duty of the governor of the commonwealth to ascertain and certify the result as other elections are certified.

If election cannot be held on day mentioned, governor to issue his proclamation ordering such election.

3. In the event the state of the country will not permit, or from any cause, said election for annexation cannot be fairly held on the day aforesaid, it shall be the duty of the governor of this commonwealth, as soon as such election can be safely and fairly held and a full and free expression of the opinion of the people had thereon, to issue his proclamation ordering such election for the purpose aforesaid, and certify the result as aforesaid.

Commencement.

4. This act shall be in force from its passage.

CHAP. 79.—An ACT for the relief of Alexander Hay.

Passed February 5, 1863.

The sale of the Alexandria and Washington railroad made a lawful sale.

1. Be it enacted by the General Assembly of Virginia, That the sale of the Alexandria and Washington railroad made on the tenth day of April, eighteen hundred and sixty-two, and the purchase of the same by Alexander Hay and his associates, be, and hereby is made a lawful sale, and shall not in any wise be effected by the law "staying the collection of certain debts," passed July twenty-sixth, eighteen hundred and sixty-one, and amended and re-enacted February eighth eighteen hundred and sixty-two, and again extended December twenty-second, eighteen hundred and sixty-two; and said sale shall be deemed valid, of full force and effect as if said law had never been passed.

Not effected by the law "staying the collection of certain debts."

Commencement.

2. This act shall be in force from its passage.

CHAP. 80.—An ACT amending and re-enacting section eight of an Act passed January 31st, 1863, entitled "An Act imposing taxes for the support of the Government.

Passed February 5, 1863.

1. Be it enacted by the General Assembly, That section eight of an act passed January thirty-first, eighteen hundred and sixty-three, entitled "An act imposing taxes for the support of the government," be amended and re-enacted so as to read as follows:

Section eight of an act passed January 31st, 1863, amended and re-enacted.

"§8. On the income, salary or fees received during the year ending the first day of February of each year in consideration of the discharge of any office or employment in the service of the state, or in consideration of the discharge of any office or employment in the service of any corporation, or in the service of any company, firm or person, except where the service is that of a minister of the Gospel, three-fourths of one per centum upon so much thereof as exceeds five hundred dollars.

The tax on a salary payable under this section by an officer of the government receiving the same out of the treasury, shall be deducted at the rate chargeable on the annual salary on the amount drawn from the treasury at the time the salary is audited and paid; and fees or other income of such officer shall be listed and assessed by the commissioners as in other cases, and at the rates prescribed thereon."

2. This act shall be in force from its passage.

Commencement.

CHAP. 81.—An ACT amending and re-enacting the fourth section of the Ordinance passed June 21st, 1861.

Passed February 5, 1863.

1. Be it enacted by the General Assembly of Virginia, That the fourth section of the ordinance passed June twenty-first, eighteen hundred and sixty-one, be amended and re-enacted so as to read as follows:

The fourth section amended and re-enacted.

"§4. That whenever the governor shall deem it expedient and for the public good, that the offices of the auditor and treasurer should be kept in the city of Alexandria or in any other place in the commonwealth outside of the city of Wheeling, he may issue a proclamation establishing the said offices of auditor and treasurer at Alexandria or such other place, as in his judgment he may deem best, and the executive is hereby authorized to convene the legislature at such place within the state of Virginia, as he may select, for the seat of government, under this act.

2. This act shall be in force from and after its passage.

Commencement.

CHAP. 82.—An ACT authorizing the revival of certain suits depending in the courts of the Commonwealth.

Passed February 5, 1863.

Suits pending in the courts of the commonwealth not to abate or be dismissed.

1. Be it enacted by the General Assembly, That all or any suits depending in any court of the commonwealth in the name of the board of public works, prior to the ninth day of August, eighteen hundred and sixty-one, shall not abate or be dismissed for want of authority in the said courts to prosecute them by reason of any change in the officer discharging the duties of said board, but may be revived (if necessary) in the name of the governor, auditor and treasurer of the commonwealth, acting as said board and discharging its duties as provided for by the ordinance of the convention of August ninth, eighteen hundred and sixty-one, anything in the act of general assembly passed July sixteenth, eighteen hundred and sixty-one, to the contrary notwithstanding.

Commencement.

2. This act shall be in force from its passage.

CHAP. 83.—An ACT to authorize the Auditor of Public Accounts to appoint Commissioners of the Revenue in certain cases.

Passed February 5, 1863.

When the auditor is requested to appoint commissioners of the revenue.

1. Be it enacted by the General Assembly of Virginia, That the auditor of public accounts is hereby authorized and required in counties and towns of this commonwealth, where the commissioners' books of said counties and towns cannot be found, and where commissioners have not been elected under the reorganized government of Virginia, to appoint commissioners of the revenue to assess the taxes due the commonwealth for the year eighteen hundred and sixty-two and eighteen hundred and sixty-three, and forward the books for that purpose to said commissioners.

Commencement.

2. This act shall be in force from its passage.

CHAP. 84.—An ACT amending and re-enacting section thirteenth of an act passed July 26, 1861, entitled "An Act to provide for the public health."

Passed February 5, 1863.

Section thirteen amended and re-enacted.

1. Be it enacted by the General Assembly, That section thirteen of an act passed July twenty-sixth, eighteen hundred and sixty-one, entitled "An act to provide for the public health," be amended and re-enacted so as to read as follows:

"§13. The sum of five hundred dollars is hereby appropriated for the payment of such agent. The same, or so much thereof, as may be required, shall be paid semi-annually on the order of the governor, when he shall be satisfied that the agent has faithfully complied with his contract and duty, as agent, to the time of such payment."

Commencement.

2. This act shall be in force from its passage.

CHAP. 85.—An ACT repealing an Act passed February 15th, 1862, entitled "An Act to provide for the payment of costs in prosecutions for misdemeanors, &c."

Passed February 5, 1863.

Act passed February 15th, 1862, repealed.

1, Be it enacted by the General Assembly of Virginia, That an act passed February fifteenth, eighteen hundred and sixty-two, entitled "An act to provide for the payment of costs in prosecutions for misdemeanors, and so forth," be and the same is hereby repealed.

Commencement.

2. This act shall be in force from its passage.

CHAP. 86.—An ACT to amend and re-enact an Act entitled "An Act to incorporate the Bank of Guyandotte," passed March 2d, 1854.

Passed February 5, 1863.

Sections first, second, third and eighth of an act to incorporate the Bank of Guyandotte amended and re-enacted.

1. Be it enacted by the General Assembly, That sections first, second, third and eighth sections of an act entitled "An act to incorporate the Bank of Guyandotte, in the county of Cabell," passed March second eighteen hundred and fifty-four, be amended and re-enacted so as to read as follows:

"§1. It shall be lawful to establish a bank in the town of Guyandotte, in the county of Cabell; the capital stock of which shall be not less than one hundred thousand dollars nor more than three hundred thousand dollars, to be raised by subscription of shares of one hundred dollars each; books of subscription for the stock aforesaid to be opened on the second Monday of March, eighteen hundred and sixty-three, and remain open until one hundred thousand dollars is subscribed in the town of Guyandotte under the superintendence of John Laidley, sr., Thomas J. Hayslip and James H. Poage, or any two of them, who shall have power, and their rights, powers and duties in relation to said bank shall be in all all respects as far as may be applicable, such as are prescribed by the code of Virginia. The commissioners shall be, and they are hereby authorized to receive subscriptions partly in money and partly in the stocks of the United States, the medium of payment to be expressed at the time of making such subscription, and the stock transferred to the bank and the money paid over as soon as the president and directors shall be elected.

"§2. The said bank shall be called "The Bank of Guyandotte," but the name may be changed to the "The Bank of West Virginia," if the stockholders or directors shall so elect, and by said name and style the stockholders thereof and their successors shall be a body politic and corporate, with all the rights, powers and privileges conferred upon banks of the state by chapters fifty-seven and fifty-eight of the code of Virginia, and shall moreover be subject to all the rules, regulations and restrictions imposed by the said chapters fifty-seven and fifty-eight, except the seventh section of said chapter fifty-eight, so far as said chapters are consistent with this act, provided that the stockholders shall appoint and elect directors.

"§3. Whenever the said bank shall legally transfer to deposit with the treasurer of the state, in-trust for, and for the purposes of the said bank, certificates of the public debt of the United States, bearing six per centum interest, to the amount of fifty thousand dollars, the said bank shall be authorized to deliver notes of any denomination it may elect, not less than five dollars, to the treasurer in the usual form of bank notes intended for circulation, to the full amount of the stock so deposited, upon the face of which shall be written or printed the words "Secured by pledge of United States securities," and each bank note shall countersigned by the treasurer and numbered and registered in proper books to be provided and kept for the purpose in the office of the treasurer; and such notes so countersigned shall be re-delivered to the officers of such bank, and the said bank so receiving the same may thereupon issue its notes aforesaid to the full amount of the stock so deposited, and from time to time upon further deposits of such certificates of debt of the United States by said bank, in sums not less than five thousand dollars; the said bank may in like manner issue notes countersigned as aforesaid to the full amount so deposited—but such issues shall not exceed in the aggregate the capital herein provided.

"§8. Each and every stockholder in said bank shall be liable rateably out of his private estate for the circulation and express contract debts of said bank to the amount of stock held by him, upon a failure of said bank to redeem its notes or pay said debts. The total amount of paper circulation of the bank hereby incorporated shall never exceed five times the amount of coin in possession and actually the property of the bank. If the coin be reduced to less than one-fifth of its paper circulation the bank shall thereupon make no new loan or discount until its coin shall be to its paper circulation at least the proportion of one to five: provided, however, that this act shall not take effect so as to authorize the said bank to make loans or discounts, or transact any other banking business until the minimum amount of the capital hereby authorized shall be deposited in United States stock with the treasurer of this commonwealth, as is provided by the fourth section of this act. The costs to the state arising from the provisions of this act shall be paid by the said bank."

Commencement. 2. This act shall take effect from its passage.

JOINT RESOLUTIONS.

No. 1—Joint Resolution enquiring into the manner in which the duties of the Public Printer have been discharged.

Passed December 8, 1862.

Resolved, That a joint committee of eight, consisting of five from the house and three from the senate be appointed by the speaker and president of the same, to inquire into the manner in which the duties of public printer have been discharged, whether he has done all the public printing, and if so, how much and in what manner, whether any printing has been done for the state by any other person, and if so, at what price, in what manner and by whom authorized, and to report to this house such other matters concerning the same as they may deem proper, and that said committee have power to send for and have before them persons, books and papers to assist them in the said inquiry.

No. 2.—Joint Resolution requesting the House of Representatives of the United States to take up and pass without amendment, the bill for the admission of the State of West Virginia, passed by the United States Senate on the 10th of July last.

Passed December 9, 1862.

Resolved, That feeling the greatest anxiety and interest in the successful issue of the movement for a new state in West Virginia, we earnestly request the house of representatives of the United States to take up and pass, without alteration or amendments, the bill which passed the senate of the United States on the 10th of July last.

No. 3.—Joint Resolutions requesting the Hon. John S. Carlile to resign his seat in the Senate of the United States

Passed December 12, 1862.

Whereas, The General Assembly of Virginia, by resolution adopted at the session of July, 1862, instructed the senators of this state in congress to sustain the federal government in its efforts to maintain the supremacy of the laws and preserve the integrity of the Union, and by a legislative act of the 13th of May, 1862, requested them to use their endeavors to obtain the consent of congress to the admission of West Virginia into the Union; and whereas, the Hon. John S. Carlile having failed not only to sustain the legitimate efforts of the federal government to suppress the insurrection, but having opposed by his votes in the senate, and public speeches in and out of the senate, measures absolutely necessary to the preservation of the Union and the enforcement of the laws, and having also by his speeches and votes in the senate opposed the bill for the admission of West Virginia into the Union; therefore, *Resolved,* By the General Assembly, That inasmuch as he has neither regarded the instructions aforesaid, nor the known will of the loyal people of the state, he is hereby respectfully requested to resign his seat.

Resolved, That the governor be requested to forward copies of these resolutions to our senators and representatives in congress, with a request that the same be laid before congress.

No. 4.—Joint Resolution appointing a joint committee to inquire into the Permit System.

Passed December 12, 1862.

Resolved, That a joint committee to consist of three members from the house and two from the senate, be appointed to inquire in to the "permit" system now enforced by agents of the treasury department, with a view to relieve, if possible, the citizens of this state from the inconvenience and injury imposed upon them under its present operations.

No. 5.—Joint Resolution directing the Auditor to issue to the heirs generally of Walter Brooke, a land warrant for five thousand acres.

Passed January 10, 1863.

Whereas, It appears to the general assembly that the heirs of Commodore Walter Brooke in the war of the revolution, are entitled to five thousand acres of additional land bounty from the state of Virginia, for the service of their ancestor, the said Walter Brooke, in the war of the revolution ; and whereas, by reason of the existing rebellion the warrant for the said additional amount of land bounty cannot be had from the land office at Richmond, Therefore

Resolved, By the General Assembly, That Samuel Crane, the auditor of this commonwealth, be, and he is hereby directed to issue to the heirs generally of the said Walter Brooke, a land warrant for the balance of bounty due to them, to-wit: five thousand acres, that amount being acknowledged by the register of the land office at Richmond, to be so due.

No. 6.—Joint Resolution of Condolence.

Passed January 10, 1863.

Whereas, It has been made known to the General Assembly of Virginia, that on Tuesday the 6th day of January, 1863, Mrs. Tarr, wife of Campbell Tarr, Esq., treasurer of the state of Virginia, departed this life.

Resolved, That in this bereavement of our worthy treasurer the general assembly tenders to him its deepest regrets and sincere sympathy at the dispensation.

No. 7.—Joint Resolution of thanks to Dr. Hills, superintendent of the Insane Asylum at Columbus, Ohio, for his kind and humane treatment to the insane of this State.

Passed January 10, 1863.

Resolved, By the Senate and House of Delegates of Virginia, That the thanks of the state of Virginia are justly due and are hereby tendered to Dr. Hills, superintendent of the asylum at Columbus, Ohio, for the kind and humane treatment extended by him to the unfortunate insane of this state, who, because of the present rebellion, could not be received and treated in the lunatic asylums of this commonwealth.

Resolved, That the governor be requested to transmit a copy of these resolutions to Dr. Hills.

No. 8.—Joint Resolution to elect a Public Printer.

Passed January 19, 1863.

Resolved, That this house will, with the concurrence of the senate, proceed to the election of a public printer at eleven o'clock, a. m., on Wednesday next.

No. 9.—Joint Resolution to elect a United States Senator.

Passed January 21, 1863.

Resolved, By the General Assembly of Virginia, that both houses by a joint vote proceed on Friday the twenty-third inst., at twelve o'clock, m., to elect a United States Senator.

No. 10.—Joint Resolution to employ a Janitor for the Public Buildings.

Passed January 29, 1863.

Resolved, That the governor be authorized to employ a janitor for the public buildings.

No. 11.—Joint Resolution releasing the late Public Printer from the payment of Four Hundred and Ten Dollars, upon conditions.

Passed February 4, 1863.

Whereas, By the report of the committee on public printing, it appears that A. S. Trowbridge, as public printer, is indebted to the state in the amount of four hundred and ten dollars, being for over charges on work done by him as public printer; and whereas, said Trowbridge has printed a number of reams of commissioner's books which the auditor refused to receive or pay for; and whereas, public printing to which the said Trowbridge was entitled by law, was withheld from him by an officer or officers of the government, thus depriving him of the revenue or profits therefrom, Therefore be it

Resolved, The senate concurring, that the auditor, be, and is hereby authorized and required to receive from the said A. S. Trowbridge the commissioner's books herein referred to, and that upon delivery of said books to the auditor, the said Trowbridge is hereby discharged of his indebtedness to the state in the amount of four hundred and ten dollars aforesaid: provided, however, that nothing in the foregoing preamble and resolution, shall be so construed as a reflection upon the auditor of public accounts for withholding printing from A. S. Trowbridge, late public printer.

No. 12.—Joint Resolution authorizing the Governor to procure and present to the Seventh Regiment Virginia Volunteer Infantry, a suitable flag.

Passed February 4, 1863.

Resolved, The senate concurring, that the governor be authorized and requested to procure and and present to the Seventh Regiment Virginia Volunteer Infantry a suitable flag, with the following inscription: "Seventh (Union) Virginia Volunteers, Antietam, September 17th, 1862," on one side, and on the other side, "Fredericksburg, December 13th, 1862."

No. 13.—Joint Resolution appropriating Fifty Dollars to the Clerk of the House, in addition to his present compensation.

Passed February 4, 1863.

Resolved, By the General Assembly, That the sum of fifty dollars be appropriated to the clerk of the house of delegates, in addition to his present compensation, to be paid out of the appropriation for expenses of the general assembly.

No. 14.—Joint Resolution directing the Auditor of Public Accounts to settle with Samuel W. Wilson, Sheriff of Hancock County.

Passed February 5, 1863.

Resolved, By the General Assembly, That the auditor of public accounts be directed to settle with Samuel W. Wilson, sheriff of Hancock county, and allow him his delinquent list of land, property, capitation and license tax for eighteen hundred and sixty, if found by the auditor to be correct, upon the condition that the said sheriff pay into the treasury any sums upon settlement found due the state.

No. 15.—Joint Resolutions in reference to retaliation and indemnity.

Passed February 5, 1863.

Whereas, It is represented to this General Assembly, That the rebels in Virginia have arrested and now have confined in prisons, many loyal citizens, civilians and non-combatants, including men, women and children, on the pretense of their disloyalty to the pretended southern confederacy; and whereas, the said rebels have robbed many of our loyal citizens of large amounts of money and property; therefore, be it

Resolved, By the General Assembly of Virginia, That the president of the United States be, and he is hereby respectfully requested to order military officers of the general government in this state to retaliate by arresting such a number of known adherents to, or avowed sympathizers with, the said pretended confederacy, as in his opinion may be expedient, to be held in close confinement as hostages, and be subject in all respects, as nearly as may be, to the same treatment which is imposed upon loyal citizens by the authority of the said pretended confederacy; and to adopt such other and further measures as shall be necessary to effect the release of such loyal persons as are now or may hereafter be so arrested and confined; and that the president be further requested to require the military authorities, to institute such measures as will compel the rebels and those aiding and assisting them in any degree in the arrest and robbery of our loyal citizens, to fully indemnify those loyal citizens for all losses by said robberies.

Be it further resolved, That we fully and heartily endorse the course pursued by General Milroy for the protection and indemnity of the loyal citizens of Western Virginia, and we respectfully ask the general government to sustain him in his action looking to the indemnity of the loyal citizens aforesaid, and that the government be requested to instruct the military in this commonwealth to pursue a similar course, as we believe that it is the most efficient means of protecting the property of our loyal citizens.

Resolved further, That the governor be, and he is hereby requested to communicate the foregoing preamble and resolutions to the president of the United States, together with a list of the names and condition, so far as may be known to him, of the persons so held in confinement, or robbed as aforesaid, with such other information pertinent to the subject as he may deem expedient.

No. 16.—Joint Resolution requesting the President of the United States and Secretary of War to direct the transfer of the Seventh (Union) Regiment Virginia Volunteer Infantry to the Western Virginia service.

Passed February 5, 1863.

Whereas, It has been represented to the General Assembly of Virginia, That the Seventh (Union) Regiment Virginia Volunteer Infantry has been in the service of eastern Virginia, in the army of the Potomac, during the greater portion of the time since they were mustered into the service of the United States, during which time they have done much hard service; and that they took a very active part in the battles of Antietam and Fredericksburg, Virginia, during which their lossess were very heavy; and that by sickness and death during their long campaign on the peninsula, their ranks have greatly reduced, therefore be it

Resolved, By the General Assembly of Virginia, That the president of the United States and the secretary of war, be, and the are hereby requested to direct the transfer of said regiment to the Western Virginia servic.

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CONSTITUTION

OF

WEST VIRGINIA.

ARTICLE I.

THE STATE.

1. The State of West Virginia shall be and remain one of the United States of America. The Constitution of the United States, and the laws and treaties made in pursuance thereof, shall be the supreme law of the land.

2. The following counties, formerly parts of the State of Virginia, shall be included in, and form part of, the State of West Virginia, namely: The counties of Hancock, Brooke, Ohio, Marshall, Wetzel, Marion, Monongalia, Preston, Taylor, Pleasants, Tyler, Ritchie, Doddridge, Harrison, Wood, Jackson, Wirt, Roane, Calhoun, Gilmer, Barbour, Tucker, Lewis, Braxton, Upshur, Randolph, Mason, Putnam, Kanawha, Clay, Nicholas, Cabell, Wayne, Boone, Logan, Wyoming, Mercer, McDowell, Webster, Pocahontas, Fayette, Raleigh, Greenbrier and Monroe.

And if a majority of the votes cast at the election or elections held, as provided in the schedule hereof, in the district composed of the counties of Pendleton, Hardy, Hampshire, and Morgan, shall be in favor of the adoption of this Constitution, the said four counties shall be included in, and form part of, the State of West Virginia; and if the same shall be so included, and a majority of the votes cast at the said election or elections, in the district composed of the counties of Berkeley, Jefferson and Frederick shall be in favor of the adoption of this constitution, then the three last mentioned counties shall also be included in, and form part of, the State of West Virginia.

The State of West Virginia shall also include so much of the bed, banks and shores of the Ohio river as heretofore appertained to the State of Virginia; and the territorial rights and property in, and the jurisdiction of whatever nature over, the said bed, banks and shores heretofore reserved by, or vested in, the State of Virginia, shall vest in, and be hereafter exercised by, the State of West Virginia.

3. The powers of Government reside in all the citizens of the State, and can be rightfully exercised only in accordance with their will and appointment.

4. The Legislative, Executive and Judicial departments of the Government shall be separate and distinct. Neither shall exercise the powers properly belonging to either of the others. No person shall be invested with or exercise the powers of more than one of them at the same time.

5. Writs, grants and commissions issued under state authority, shall run in the name of, and official bonds shall be made payable to, The State of West Virginia. Indictments shall conclude "against the peace and dignity of the State of West Virginia."

6. The citizens of the State are the citizens of the United States residing therein; but no person in the military, naval or marine service of the United States shall be deemed a resident of this State by reason of being stationed therein.

7. Every citizen shall be entitled to equal representation in the government, and in all apportionments of representation, equality of numbers of those entitled thereto shall, as far as practicable, be preserved.

ARTICLE II.

BILL OF RIGHTS.

1. The privilege of the writ of *habeas corpus* shall not be suspended except when in time of invasion, insurrection or other public danger, the public safety may require it. No person shall be held to answer for treason, felony or other crime not cognizable by a justice, unless on presentment or indictment of a grand jury. No bill of attainder, *ex post facto* law, or law impairing the obligation of a contract, shall be passed.

2. Excessive bail shall not be required, or excessive fines imposed, or cruel and unusual punishments inflicted. Penalties shall be proportioned to the character and degree of the offence. No person shall be compelled to be a witness against himself, or be twice put in jeopardy for the same offence.

3. The right of the citizens to be secure in their houses, persons, papers and effects, against unreasonable searches and seizures, shall not be violated. No warrant shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons and things to be seized.

4. No law abridging freedom of speech or of the press shall be passed; but the legislature may provide for the restraint and punishment of the publishing and vending of obscene books, papers and pictures, and of libel and defamation of character, and for the recovery, in civil actions, by the aggrieved party, of suitable damages for such libel or defamation. Attempts to justify and uphold an armed invasion of the state, or an organized insurrection therein, during the continuance of such invasion or insurrection, by publicly speaking, writing or printing, or by publishing or circulating such writing or printing, may be, by law, declared a misdemeanor, and punished accordingly.

5. In prosecutions and civil suits for libel, the truth may be given in evidence; and if it shall appear to the jury that the matter charged as libelous is true, and was published with good motives and for justifiable ends, the verdict shall be for the defendant.

6. Private property shall not be taken for public use without just compensation. No person, in time of peace, shall be deprived of life, liberty or property, without due process of law. The military shall be subordinate to the civil power.

7. In suits at common law, where the value in controversy exceeds twenty dollars, the right of trial by jury, if required by either party, shall be preserved. No fact tried by a jury shall be otherwise re-examined in any case than according to the rules of the common law.

8. The trial of crimes and misdemeanors, unless herein otherwise provided, shall be by jury, and shall be held publicly and without unreasonable delay, in the county where the alleged offence was committed, unless upon petition of the accused and for good cause shown, or in consequence of the existence of war or insurrection in such county, it is removed to, or instituted in, some other county. In all such trials the accused shall be informed of the character and cause of the accusation, and be confronted with the witnesses against him, and shall have the assistance of counsel for his defense, and compulsory process for obtaining witnesses in his favor.

9. No man shall be compelled to frequent or support any religious worship, place or ministry whatsoever; nor shall any man be enforced, restrained, molested or burthened in his body or goods, or otherwise suffer, on account of his religious opinions or belief; but all men shall be free to profess, and by argument to maintain, their opinions in matters of religion, and the same shall in no wise affect, diminish or enlarge their civil capacities. And the Legislature shall not prescribe any religious test whatever; or confer any peculiar privileges or advantages on any sect or denomination; or pass any law requiring or authorizing any religious society, or the people of any district within this state, to levy on themselves or others, any tax for the erection or repair of any house for public worship, or for the support of any church or ministry; but it shall be left free to every person to select his religious instructor, and to make for his support such private contract as he shall please.

10. Treason against the state shall consist only in levying war against it, or in adhering to its enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court. Treason shall be punished, according to the character of the acts committed, by the infliction of one or more of the penalties, of death, imprisonment, fine, or confiscation of the real and personal property of the offender, as may be prescribed by law.

ARTICLE III.

ELECTIONS AND OFFICERS.

1. The white male citizens of the State shall be entitled to vote at all elections held within the election districts in which they respectively reside; but no person who is a minor, or of unsound mind, or a pauper, or who is under conviction of treason, felony, or bribery in an election, or who has not been a resident of the state for one year, and of the county in which he offers to vote for thirty days, next preceding such offer, shall be permitted to vote while such disability continues.

2. In all elections by the people the mode of voting shall be by ballot.

3. No voter, during the continuance of an election at which he is entitled to vote, or during the time necessary and convenient for going to and returning from the same, shall be subject to arrest upon civil process or be liable to attend any court or judicial proceeding as suitor, juror or witness; or to work upon the public roads; or, except in time of war or public danger, to render military service.

4. No persons, except citizens entitled to vote, shall be elected or appointed to any State, county or municipal office. Judges must have attained the age

of thirty-five years, the Governor the age of thirty years, and the Attorney-General and Senators the age of twenty-five years, at the beginning of their respective terms of service; and must have been citizens of the State for five years next preceding, or at the time this Constitution goes into operation.

5. Every person elected or appointed to any office or trust, civil or military, shall, before proceeding to exercise the authority or discharge the duties of the same, make oath or affirmation that he will support the Constitution of the United States, and the Constitution of this State; and every citizen of this State may, in time of war, insurrection or public danger, be required by law to make the like oath or affirmation, upon pain of suspension of his right of voting and holding office under this Constitution.

6. All officers elected or appointed under this constitution may be removed from office for misconduct, incompetence, neglect of duty, or other causes, in such manner as may be prescribed by general laws; and unless so removed, shall continue to discharge the duties of their respective offices, until their successors are elected or appointed and qualified.

7. The general elections of State and County officers, and of members of the Legislature, shall be held on the fourth Thursday of October. The terms of such officers and members, not elected or appointed to fill a vacancy, shall, unless herein otherwise provided, begin on the first day of January next succeeding their election. Elections to fill vacancies shall be for the unexpired term. Vacancies shall be filled in such manner as may be prescribed by law.

8. The Legislature, in cases not provided for in this Constitution, shall prescribe by general laws, the terms of office, powers, duties and compensation of all public officers and agents, and the manner in which they shall be elected, appointed and removed.

9. No extra compensation shall be granted or allowed to any public officer, agent or contractor, after the services shall have been rendered, or the contract entered into. Nor shall the salary or compensation of any public officer be increased or diminished during his term of office.

10. Any officer of the State may be impeached for maladministration, corruption, incompetence, neglect of duty, or any high crime or misdemeanor. The House of Delegates shall have the sole power of impeachment. The Senate shall have the sole power to try impeachments. When sitting for that purpose, the Senators shall be on oath or affirmation; and no persons shall be convicted without the concurrence of two-thirds of the members present. Judgment in cases of impeachment shall not extend further than to removal from office and disqualification to hold any office of honor, trust or profit under the State; but the party convicted shall, nevertheless, be liable and subject to indictment, trial, judgment and punishment according to law. The Senate may sit during the recess of the Legislature, for the trial of impeachments.

11. Any citizen of this State, who shall after the adoption of this Constitution, either in or out of the State, fight a duel with deadly weapons, or send or accept a challenge so to do; or who shall act as a second, or knowingly aid or assist in such duel, shall ever thereafter be incapable of holding any office of honor, trust or profit under this state.

12. The Legislature may provide for a registry of voters. They shall prescribe the manner of conducting and making returns of elections, and of

determining contested elections;—and shall pass such laws as may be necessary and proper to prevent intimidation, disorder or violence at the polls, and corruption or fraud in voting.

ARTICLE IV.

LEGISLATURE.

1. The Legislative power shall be vested in a Senate and House of Delegates. The style of their acts shall be, "*Be it enacted by the Legislature of West Virginia.*"

2. The Senate shall be composed of eighteen and the House of Delegates of forty-seven members, subject to be increased according to the provisions hereinafter contained.

3. The term of office of Senators shall be two years, and that of Delegates one year. The Senators first elected shall divide themselves into two classes, one Senator from every district being assigned to each class; and of these classes, the first, to be designated by lot in such manner as the Senate may determine, shall hold their offices for one year, and the second for two years; so that after the first election one-half of the Senators shall be elected annually.

4. For the election of Senators, the State shall be divided into nine Senatorial Districts; which number shall not be diminished, but may be increased as hereinafter provided. Every district shall choose two Senators, but after the first election both shall not be chosen from the same county. The districts shall be equal, as nearly as practicable, in white population, according to the returns of the United States census. They shall be compact, formed of contiguous territory, and bounded by county lines. After every such census, the Legislature shall alter the Senatorial Districts, so far as may be necessary to make them conform to the foregoing provisions.

5. Any Senatorial District may at any time be divided, by county lines or otherwise, into two sections, which shall be equal, as nearly as practicable, in white population. If such division be made, each section shall elect one of the Senators for the district; and the Senators so elected shall be classified in such manner as the Senate may determine.

6. Until the Senatorial Districts are altered by the Legislature after the next census, the counties of Hancock, Brooke and Ohio shall constitute the first Senatorial District; Marshall, Wetzel and Marion the second; Monongalia, Preston and Taylor the third; Pleasants, Tyler, Ritchie, Doddridge and Harrison the fourth; Wood, Jackson, Wirt, Roane, Calhoun and Gilmer the fifth; Barbour, Tucker, Lewis, Braxton, Upshur and Randolph the sixth; Mason, Putnam, Kanawha, Clay and Nicholas the seventh; Cabell, Wayne, Boone, Logan, Wyoming, Mercer and McDowell the eighth; and Webster, Pocahontas, Fayette, Raleigh, Greenbrier and Monroe the ninth.

7. For the election of Delegates, every county containing a white population of less than half the ratio of representation for the House of Delegates, shall, at each apportionment, be attached to some contiguous county or counties, to form a Delegate District.

8. When two or more counties are formed into a Delegate District, the Legislature shall provide by law that the Delegates to be chosen by the voters

of the district shall be, in rotation, residents of each county, for a greater or less number of terms, proportioned, as nearly as can be conveniently done, to the white population of the several counties in the district.

9. After every census the Delegates shall be apportioned as follows:

The ratio of representation for the House of Delegates shall be ascertained by dividing the whole white population of the State by the number of which the House is to consist, and rejecting the fraction of a unit, if any, resulting from such division.

Dividing the white population of every Delegate District, and of every county not included in a Delegate District, by the ratio thus ascertained, there shall be assigned to each a number of Delegates equal to the quotient obtained by this division, excluding the fractional remainder.

The additional Delegates necessary to make up the number of which the House is to consist, shall then be assigned to those Delegate Districts, and counties not included in a Delegate District, which would otherwise have the largest fractions unrepresented. But every Delegate District and county not included in a Delegate District, shall be entitled to at least one Delegate.

10. Until a new apportionment is declared, the counties of Pleasants and Wood shall form the first Delegate District: Calhoun and Gilmer the second; Clay and Nicholas the third; Webster and Pocahontas the fourth, Tucker and Randolph the fifth; and McDowell, Wyoming and Raleigh the sixth. The first Delegate District shall choose two Delegates, and the other five, one each.

11. The Delegates to be chosen by the first Delegate District shall, for the first term, both be residents of the county of Wood; and for the second term, one shall be a resident of Wood, and the other of Pleasants county; and so in rotation. The Delegate to be chosen by the second Delegate District shall, for the first term, be a resident of Gilmer, and for the second, of Calhoun county. The Delegate to be chosen by the third Delegate District shall, for the first two terms, be a resident of Nicholas, and for the third term of Clay county. The Delegate to be chosen by the fourth Delegate District shall, for the first two terms, be a resident of Pocahontas, and for the third term of Webster county. The Delegate to be chosen by the fifth Delegate District shall, for the first three terms, be a resident of Randolph, and for the fourth term of Tucker county. And the Delegate to be chosen by the sixth Delegate District shall, for the first term, be a resident of Raleigh, for the second term of Wyoming, for the third term of Raleigh, for the fourth term of Wyoming, and for the fifth term of McDowell county; and so, in each case, in rotation.

12. Until a new apportionment is declared, the apportionment of Delegates to the counties not included in Delegate Districts, shall be as follows:

To Barbour, Boone, Braxton, Brooke, Cabell, Doddridge, Fayette, Hancock, Jackson, Lewis, Logan, Mason, Mercer, Putnam, Ritchie, Roane, Taylor, Tyler, Upshur, Wayne, Wetzel and Wirt counties, one Delegate each.

To Harrison, Kanawha, Marion, Marshall, Monongalia and Preston counties, two Delegates each.

To Ohio county, three Delegates.

To Greenbrier and Monroe counties together, three Delegates, of whom, for the first term, two shall be residents of Greenbrier, and one of Monroe county; and for the second term, two shall be residents of Monroe and one of Greenbrier county; and so in rotation.

13. If the counties of Pendleton, Hardy, Hampshire and Morgan become part of this State, they shall, until the next apportionment, constitute the tenth Senatorial District, and choose two Senators. And if the counties of Frederick, Berkeley and Jefferson become part of this State, they shall until the next apportionment, constitute the eleventh Senatorial District and choose two Senators. And the number of the Senate shall be, in the first case twenty, and in the last twenty-two, instead of eighteen.

14. If the seven last named counties become part of this State, the apportionment of Delegates to the same shall, until the next apportionment, be as follows: to Pendleton and Hardy, one each; to Hampshire, Frederick and Jefferson, two each; and the counties of Morgan and Berkeley shall form the seventh Delegate District, and choose two Delegates; of whom, for the first term, one shall be a resident of Berkeley and the other of Morgan county; and for the second term, both shall be residents of Berkeley county; and so in rotation.

But if the counties of Pendleton, Hardy, Hampshire and Morgan become part of this State, and Frederick, Berkeley and Jefferson do not, then Pendleton, Hardy and Morgan counties shall each choose one Delegate and Hampshire two, until the next apportionment.

The number of the House of Delegates shall, instead of forty-seven, be in the first case fifty-seven, and in the last fifty-two.

15. The arrangement of the Senatorial and Delegate Districts, and apportionment of Delegates, shall hereafter be declared by law, as soon as possible after each succeeding census taken by authority of the United States. When so declared, they shall apply to the first general election for members of the Legislature to be thereafter held, and shall continue in force, unchanged until such districts are altered and Delegates apportioned under the succeeding census.

16. Additional territory may be admitted into and become part of this State with the consent of the Legislature. And in such case, provision shall be made by law for the representation of the white population thereof in the Senate and House of Delegates, in conformity with the principles set forth in this Constitution. And the number of members of which each branch of the Legislature is to consist, shall thereafter be increased by the representation assigned to such additional territory.

17. No person shall be a member of the Legislature who shall not have resided within the district or county for which he was chosen one year next preceding his election; and if a Senator or Delegate remove from the district or county for which he was chosen, his office shall be thereby vacated.

18. No person holding an office of profit under this State or the United States, shall be a member of the Legislature.

19. No person who may have collected, or been entrusted with public money, whether State, county, township or municipal, shall be eligible to the Legislature, or to any office of honor, trust or profit, until he shall have duly accounted for and paid over such money according to law.

20. The Legislature shall meet once in every year, and not oftener, unless convened by the Governor. The regular sessions shall begin on the third Tuesday of January.

21. The Governor may convene the Legislature by proclamation, whenever

in his opinion, the public safety or welfare shall require it. It shall be his duty to convene them on application of a majority of the members elected to each branch.

22. The Seat of Government shall be at the city of Wheeling, until a permanent Seat of Government be established by law.

23. When, for any cause, the Legislature, in the opinion of the Governor, cannot safely meet at the Seat of Government, the Governor, by proclamation, may convene them at another place.

24. No session of the Legislature, after the first, shall continue longer than forty-five days, without the concurrence of three-fourths of the members elected to each branch.

25. Neither branch, during the session, shall adjourn for more than two days, without the consent of the other. Nor shall either, without such consent, adjourn to any other place than that in which the Legislature is then sitting.

26. Each branch shall be the judge of the elections, qualifications and returns of its own members.

27. A majority of each branch shall constitute a quorum to do business. But a smaller number may adjourn from day to day, and compel the attendance of absent members, in such manner as shall be prescribed by law.

28. The Senate shall choose from their own body a President, and the House of Delegates one of their own number as Speaker: Each branch shall appoint its own officers and remove them at pleasure; and shall determine its own rules of proceeding.

29. Each branch may punish its own members for disorderly behavior; and with the concurrence of two-thirds of the members present, expel a member, but not a second time for the same offence.

30. Each branch shall have the power necessary to provide for its own safety, and the undisturbed transaction of its business; and may punish, by imprisonment, any person not a member, for disrespectful behavior in its presence, obstructing any of its proceedings, or any of its officers in the discharge of his duties, or for any assault, threatening or abuse of a member for words spoken in debate. But such imprisonment shall not extend beyond the termination of the session, and shall not prevent the punishment of any offence by the ordinary course of law.

31. For words spoken in debate, or any report, motion or proposition made in either branch, a member shall not be questioned in any other place.

32. Members of the Legislature shall, in all cases except treason, felony and breach of the peace, be privileged from arrest during the session, and for ten days before and after the same.

33. Senators and Delegates shall receive for their services a compensation not exceeding three dollars a day during the session of the Legislature, and also ten cents for every mile they shall travel in going to and returning from the place of meeting by the most direct route. The President of the Senate and Speaker of the House shall, respectively, receive an additional compensation of two dollars a day.

34. Bills and resolutions may originate in either branch, to be passed, amended or rejected by the other.

35. No bill shall become a law until it has been fully and distinctly read on

three different days in each branch; unless in cases of urgency, three-fourths of the members present dispense with this rule.

36. No law shall embrace more than one object, which shall be expressed in its title.

37. On the passage of every bill the vote shall be taken by yeas and nays, and be entered on the journal; and no bill shall be passed by either branch without the affirmative vote of a majority of the members elected thereto.

38. The presiding officer of each branch shall sign, before the close of the session, all bills and joint resolutions passed by the Legislature.

39. Each branch shall keep a journal of its proceedings, and cause the same to be published from time to time; and the yeas and nays on any question, if called for by one-fifth of those present, shall be entered on the journal.

ARTICLE V.

EXECUTIVE.

1. The chief Executive power shall be vested in a Governor, who shall be elected by the voters of the State, and hold his office for the term of two years, to commence on the fourth day of March next succeeding his election. The person acting as Governor shall not be elected or appointed to any other office during his term of service.

2. The Governor shall reside at the Seat of Government; shall receive two thousand dollars for each year of his service, and during his continuance in office shall receive no emolument from this or any other government.

3. The Governor shall be commander-in-chief of the military forces of the State; shall have power to call out the militia to repel invasion, suppress insurrection and enforce the execution of the laws; shall conduct in person, or in such manner as may be prescribed by law, all intercourse with other States; and during the recess of the Legislature shall fill temporarily all vacancies in office, not provided for by this Constitution or the Legislature, by commissions to expire at the end of thirty days after the commencement of the succeeding session of the Legislature. He shall take care that the laws be faithfully executed; communicate to the Legislature at each session thereof the condition of the State, and recommend to their consideration such measures as he may deem expedient. He shall have power to remit fines and penalties in such cases and under such regulations as may be prescribed by law; to commute capital punishment; and, except when the prosecution has been carried on by the House of Delegates, to grant reprieves and pardons after conviction; but he shall communicate to the Legislature, at each session, the particulars of every case of fine or penalty remitted, of punishment commuted, and of reprieve or pardon granted, with his reasons for remitting, commuting or granting the same.

4. The Governor may require information in writing from the officers of the Executive Department, upon any subject pertaining to their respective offices; and also the opinion in writing of the Attorney General upon any question of law relating to the business of the Executive Department.

5. Returns of the election of Governor shall be made, in the manner and by the persons designated by the Legislature, to the Secretary of the State, who shall deliver them to the Speaker of the House of Delegates on the first day of

the next session of the Legislature. The Speaker shall, within ten days thereafter, in the presence of a majority of each branch of the Legislature, open the said returns, when the votes shall be counted. The person having the highest number of votes, if duly qualified, shall be declared elected; but if two or more have the highest and an equal number of votes, one of them shall thereupon be chosen Governor by the joint vote of the two branches. Contested elections for Governor shall be decided by a like vote, and the mode of proceeding in such cases shall be prescribed by law.

6. In case of the removal of the Governor from office, or of his death, failure to qualify within the time prescribed by law, resignation, removal from the seat of Government, or inability to discharge the duties of the office, the said office with its compensation, duties and authority, shall devolve upon the President of the Senate; and in case of his inability or failure from any cause to act, on the Speaker of the House of Delegates. The Legislature shall provide by law for the discharge of the Executive functions in other necessary cases.

7. A Secretary of the State, a Treasurer and an Auditor shall be elected at the same time, and for the same term as the Governor. Their duties shall be prescribed by law. The Secretary of the State shall receive thirteen hundred, the Treasurer fourteen hundred, and the Auditor fifteen hundred dollars per annum.

8. The Governor shall nominate, and by and with the advice and consent of the Senate, appoint all military officers above the rank of colonel.

ARTICLE VI.

JUDICIARY.

1. The judicial power of the State shall be vested in a supreme court of appeals and circuit courts, and such inferior tribunals ~~as are~~ herein authorized.

2. The state shall be divided into nine circuits. The counties of Hancock, Brooke, Ohio and Marshall shall constitute the first; Monongalia, Preston, Tucker and Taylor, the second; Marion, Harrison and Barbour, the third; Wetzel, Tyler, Pleasants, Ritchie, Doddridge and Gilmer, the fourth; Randolph, Upshur, Lewis, Braxton, Webster and Nicholas, the fifth; Wood, Wirt, Calhoun, Roane, Jackson and Clay, the sixth; Kanawha, Mason, Putnam and Fayette, the seventh; Cabell, Wayne, Boone, Logan, Wyoming and Raleigh, the eighth; and Pocahontas, Greenbrier, Monroe, Mercer and McDowell, the ninth. If the counties of Pendleton, Hardy, Hampshire and Morgan become a part of the State, they shall constitute another circuit, to be called the tenth. And if the counties of Frederick, Berkeley and Jefferson become a part of this State, they shall constitute the eleventh circuit.

3. The Legislature may, from time to time, re-arrange the circuits; and after the expiration of five years from the time this Constitution goes into operation, and thereafter, at periods of ten years, may increase or diminish the number of circuits, or the number of courts in a year, as necessity may require.

4. For each circuit, a Judge shall be elected by the voters thereof, who shall hold his office for the term of six years. During his continuance in office he shall reside in the circuit of which he is Judge.

5. A circuit court shall be held in every county at least four times a year, unless otherwise provided by law in pursuance of the third section of this Article. The Judges may be required or authorized to hold the courts of their respective circuits alternately, and a Judge of one circuit to hold a court in any other circuit.

6. The circuit court shall have the supervision and control of all proceedings before justices and other inferior tribunals, by *mandamus*, *prohibition or certiorari.* They shall, except in cases confided exclusively by this Constitution to some other tribunal, have original and general jurisdiction of all matters at law, where the amount in controversy, exclusive of interest, exceeds twenty dollars, and of all cases in equity, and of all crimes and misdemeanors. They shall have appellate jurisdiction in all cases civil and criminal, where an appeal, writ of error or supersedeas may be allowed to the judgment or proceedings of any inferior tribunal. They shall also have such other jurisdiction, whether supervisory, original, appellate or concurrent, as may be prescribed by law.

7. The Supreme Court of Appeals shall consist of three Judges, any two of whom shall be a quorum.. They shall be elected by the voters of the State, and shall hold their offices for the term of twelve years; except that of those first elected, one, to be designated by lot in such manner as they may determine, shall hold his office for four years; another, to be designated in like manner, for eight years; and the third for twelve years; so that one shall be elected every four years after the first election.

8. The Supreme Court of Appeals shall have original jurisdiction in cases of *habeas corpus*, *mandamus* and *prohibition.* It shall have appellate jurisdiction in civil cases where the matter in controversy, exclusive of costs, is of greater value or amount than two hundred dollars; in controversies concerning the title or boundaries of land, the probate of wills, the appointment or qualification of a personal representative, guardian, committee, or curator, or concerning a mill, road, way, ferry, or landing, or the right of a corporation or county to levy tolls or taxes; and also in cases of *habeas corpus*, *mandamus*, and *prohibition*, and cases involving freedom, or the constitutionality of a law. It shall have appellate jurisdiction in criminal cases where there has been a conviction for felony or misdemeanor in a circuit court, and such other appellate jurisdiction in both civil and criminal cases as may be prescribed by law.

9. When a judgment or decree is reversed or affirmed by the supreme Court of Appeals, every point made and distinctly stated in writing in the cause, and fairly arising upon the record of the case, shall be considered and decided, and the reasons therefor shall be concisely and briefly stated in writing, and preserved with the records of the case.

10. When any Judge of the Court of Appeals is so situated in regard to any case pending before it, as to make it improper for him to aid in the trial of the same, or is under any other disability, the remaining Judges may call to their assistance a Judge of the circuit court, who shall act as a Judge of the Court of Appeals in the cases to which such disability relates.

11. Judges shall be commissioned by the Governor. The salary of a Judge of the Supreme Court of Appeals shall he two thousand, and that of a Judge of a circuit court eighteen hundred dollars per annum, and each shall receive the same allowance for necessary travel as members of the Legislature.

12. No Judge, during his term of service, shall hold any other office, appointment or public trust, under this or any other government, and the acceptance thereof shall vacate his judicial office; nor shall he, during his continuance therein, be eligible to any political office.

13. Judges may be removed from office for misconduct, incompetence or neglect of duty, or on conviction of an infamous offence, by the concurrent vote of a majority of all the members elected to each branch of the Legislature, and the cause of removal shall be entered on the journals. The Judge, against whom the Legislature may be about to proceed, shall receive notice thereof, accompanied by a copy of the causes alleged for his removal, at least twenty days before the day on which either branch of the Legislature shall act thereon.

14. The officers of the Supreme Court of Appeals shall be appointed by the Court, or by the Judges thereof in vacation. Their duties, compensation and tenure of office, shall be prescribed by law.

15. The voters of each county shall elect a Clerk of the Circuit Court, whose term of office shall be four years. His duties and compensation, and the mode of removing him from office, shall be prescribed by law; and when a vacancy shall occur in the office, the Judge of the Circuit Court shall appoint a Clerk, who shall discharge the duties of the office until the vacancy is filled. In any case, in respect to which the Clerk shall be so situated as to make it improper for him to act, the Court shall appoint a substitute.

16. At every regular election of a Governor, an Attorney General shall also be elected. He shall be commissioned by the Governor; shall perform such duties, and receive such compensation as may be prescribed by law, and be removable in the same manner as the Judges.

17. The Legislature may establish courts of limited jurisdiction within any incorporated town or city, subject to appeal to the Circuit Courts.

ARTICLE VII.

COUNTIES AND TOWNSHIPS.

1. Every County shall be divided into not less than three, nor more than ten townships, laid off as compactly as practicable, with reference to natural boundaries, and containing, as nearly as practicable, an equal number of white population, but not less than four hundred. Each Township shall be designated, "The Township of ——— in the County of ———," by which name it may sue and be sued.

2. The voters of each Township, assembled in stated or special Township meeting, shall transact all such business relating exclusively to their Township as is herein, or may be by law, required or authorized. They shall annually elect a Supervisor, Clerk of the Township, Surveyor of Roads for each precinct in their Township, Overseer of the Poor, and such other officers as may be directed by law. They shall also, every four years, elect one Justice; and if the white population of their Township exceeds twelve hundred in number, may elect an additional Justice; and every two years shall elect as many Constables as Justices. The Supervisor, or in his absence, a voter chosen by those present, shall preside at Township meetings and elections, and the Clerk shall act as clerk thereof.

3. The Supervisors chosen in the Townships of each county shall constitute a Board, to be known as "The Supervisors of the County of ——," by which name they may sue and be sued, and make and use a common seal, and enact ordinances and by-laws not inconsistent with the laws of the State. They shall meet statedly at least four times in each year at the Court House of their county, and may hold special and adjourned meetings. At their first meeting after the annual Township election, and whenever a vacancy may occur, they shall elect one of their number President of the Board; and appoint a Clerk, who shall keep a journal of their proceedings, and transact such other business pertaining to his office as may be by them or by law required, and whose compensation they shall fix by ordinance and pay from the county treasury.

4. The Board of Supervisors of each County, a majority of whom shall be a quorum, shall, under such general regulations as may be prescribed by law, have the superintendence and administration of the internal affairs and fiscal concerns of their County, including the establishment and regulation of roads, public landings, ferries and mills; the granting of ordinary and other licenses; and the laying, collecting and disbursement of the county levies; but all writs of *ad quod damnum* shall issue from the Circuit Courts. They shall from time to time appoint the places for holding elections in the several Townships of their County; and shall be the judges of the election, qualifications and returns of their own members, and of all County and Township officers.

5. The voters of every county shall elect a Sheriff, Prosecuting Attorney, Surveyor of Lands, Recorder, one or more Assessors, and such other county officers as the Legislature may from time to time direct or authorize; the duties of all of whom shall be prescribed and defined, as far as practicable, by general laws. All the said county officers shall hold their offices for two years, except the Sheriff, whose term of office shall be four years. The same person shall not be elected Sheriff for two consecutive full terms, nor shall any person who has acted as deputy of any Sheriff be elected his successor, nor shall any Sheriff act as the deputy of his successor; but the retiring Sheriff shall finish all business remaining in his hands at the expiration of his term, for which purpose his commission and official bond shall continue in force. The duties of all the said officers shall be discharged by the incumbents thereof in person, or under their superintendence. The Board of Supervisors shall designate one or more constables of their respective counties to serve process and levy executions, when the Sheriff thereof is a party defendant in a suit instituted therein, or is under any other disability.

6. The Recorder, in addition to the duties incident to the recording of inventories, and other papers relating to estates, and of deeds and other writings, the registering of births, marriages and deaths, and the issuing of marriage licenses, shall have authority, under such regulations as may be prescribed by law, to receive proof of wills and admit them to probate, to appoint and qualify personal representatives, guardians, committees and curators, to administer oaths, take acknowledgments of deeds and other writings, and relinquishments of dower.

7. The Legislature shall, at their first session, by general laws, provide for carrying into effect the foregoing provisions of this article. They shall also provide for commissioning such of the officers therein mentioned as they

may deem proper, and may require any class of them to give bond with security for the faithful discharge of the duties of their respective offices, and for accounting for and paying over, as required by law, all money which may come to their hands by virtue thereof. They shall further provide for the compensation of the said officers by fees, or from the county treasury; and for the appointment, when necessary, of deputies and assistants, whose duties and responsibilities shall be prescribed and defined by general laws. When the compensation of an officer is paid from the county treasury, the amount shall be fixed by the Board of Supervisors, within limits to be ascertained by law.

8. The civil jurisdiction of a justice shall extend to actions of assumpsit, debt, detinue and trover, if the amount claimed, exclusive of interest, does not exceed one hundred dollars, when the defendant resides, or, being a non-resident of the State, is found, or has effects or estate within his township, or when the cause of action arose therein; but any other justice of the same county may issue a summons to the defendant to appear before the justice of the proper township, which may be served by a constable of either township. In case of a vacancy in the office of justice or constable in any township having but one, or of the disability to act of the incumbent, any other justice or constable of the same county may discharge the duties of their respective offices within the said township. The manner of conducting the aforesaid actions, and of issuing summonses and executions, and of executing and making return of the same, shall be prescribed by law; and the Legislature may give to justices and constables such additional civil jurisdiction and powers, within their respective townships, as may be deemed expedient.

9. Every justice and constable shall be a conservator of the peace throughout his county, and have such jurisdiction and powers in criminal cases therein as may be prescribed by law. Jurisdiction of all misdemeanors and breaches of the peace, punishable by fine not exceeding ten dollars, or by imprisonment for not more than thirty days, may be, by law, vested in the Justices.

10. Either party to a civil suit brought before a Justice, where the value in controversy, or the damages claimed, exceeds twenty dollars; and the defendant, in such cases of misdemeanor or breach of the peace as may be made by law cognizable by a single Justice, when the penalty is imprisonment or a fine exceeding five dollars, shall be entitled to a trial by six jurors, if demanded, under such regulations as may be prescribed by law.

11. In all cases an appeal shall lie, under such regulations as may be prescribed by law, from the judgment or proceedings of a Justice or Recorder, to the Circuit Court of the County, excepting judgments of Justices in assumpsit, debt, detinue and trover, and for fines, where the amount does not exceed ten dollars exclusive of interest and costs, and where the case does not involve the freedom of a person, the validity of a law, or the right of a corporation or county to levy tolls or taxes.

12. No new county shall be formed having an area of less than four hundred square miles; or if another county be thereby reduced below that area; or if any territory be thereby taken from a County containing less than four hundred square miles. And no new county shall be formed containing a white population of less than four thousand; or if the white population of another county be thereby reduced below that number; or if any county

containing less than four thousand white inhabitants be thereby reduced in area. But the Legislature may, at any time, annex any county containing less than four thousand white inhabitants to an adjoining county or counties as part thereof.

13. The Board of Supervisors may alter the bounds of a Township of their county, or erect new Townships therein, with the consent of a majority of the voters of each Township interested, assembled in stated Township meeting, or in a meeting duly called for the purpose, subject to the provisions of the first section of this article.

14. Nothing contained in this article shall impair or affect the charter of any municipal corporation, or restrict the power of the Legislature to create or regulate such corporations.

ARTICLE VIII.

TAXATION AND FINANCE.

1. Taxation shall be equal and uniform throughout the State, and all property, both real and personal, shall be taxed in proportion to its value, to be ascertained as directed by law. No one species of property from which a tax may be collected, shall be taxed higher than any other species of property of equal value; but property used for educational, literary, scientific, religious or charitable purposes, and public property, may, by law, be exempted from taxation.

2. A capitation tax of one dollar, shall be levied upon each white male inhabitant who has attained the age of twenty-one years.

3. The Legislature shall provide for an annual tax, sufficient to defray the estimated expenses of the State for each year; and whenever the ordinary expenses of any year shall exceed the income, shall levy a tax for the ensuing year, sufficient, with other sources of income, to pay the deficiency, as well as the estimated expenses of such year.

4. No money shall be drawn from the Treasury but in pursuance of appropriations made by law, and an accurate and detailed statement of the receipts and expenditures of the public money shall be published annually.

5. No debt shall be contracted by this State, except to meet casual deficits in the revenue, to redeem a previous liability of the State, to suppress insurrection, repel invasion, or defend the State in time of war.

6. The credit of the State shall not be granted to, or in aid of, any county, city, town, township, corporation or person; nor shall the State ever assume or become responsible for the debts or liabilities of any county, city, town, township, corporation or person, unless incurred in time of war or insurrection for the benefit of the State.

7. The Legislature may at any time direct a sale of the stocks owned by the State in banks and other corporations, but the proceeds of such sale shall be applied to the liquidation of the public debt; and hereafter the State shall not become a stockholder in any bank. If the State become a stockholder in any association or corporation for purposes of internal improvement, such stock shall be paid for at the time of subscribing, or a tax shall be levied for the ensuing year, sufficient to pay the subscription in full.

8. An equitable proportion of the public debt of the Commonwealth of Virginia, prior to the first day of January in the year one thousand eight

hundred and sixty-one, shall be assumed by this State; and the Legislature shall ascertain the same as soon as may be practicable, and provide for the liquidation thereof, by a sinking fund sufficient to pay the accruing interest, and redeem the principal within thirty-four years.

ARTICLE IX.

FORFEITED AND UNAPPROPRIATED LANDS.

1. All private rights and interests in lands in this State, derived from or under the laws of the State of Virginia, prior to the time this Constitution goes into operation, shall remain valid and secure, and shall be determined by the laws heretofore in force in the State of Virginia.

2. No entry by warrant on land in this State shall be hereafter made; and in all cases where an entry has been heretofore made and has been or shall be so perfected as to entitle the locator to a grant, the Legislature shall make provision by law for issuing the same.

3. The Legislature shall provide for the sale of all lands in the State heretofore forfeited to the State of Virginia for the non-payment of the taxes charged thereon for the year one thousand eight hundred and thirty-one, or any year previous thereto, or for the failure of the former owners to have the same entered on the land books of the proper county and charged with the taxes due thereon for the said or any year previous thereto, under the laws of the State of Virginia, and also of all waste and unappropriated lands, by proceedings in the Circuit Courts of the county where such lands are situated.

7. All lands within this State, returned delinquent for non-payment of taxes to the State of Virginia since the year one thousand eight hundred and thirty-one, where the taxes, exclusive of damages, do not exceed twenty dollars; and all lands forfeited for the failure of the owners to have the same entered on the land books of the proper county, and charged with the taxes chargeable thereon since the year one thousand eight hundred and thirty-one, where the tract does not contain more than one thousand acres, are hereby released and exonerated from forfeiture, and from the delinquent taxes and damages charged thereon.

5. All lands in this State heretofore vested in the State of Virginia by forfeiture, or by purchase at the Sheriffs' sales for delinquent taxes, and not released or exonerated by the laws thereof, or by the operation of the preceding section, may be redeemed by the former owners, by payment to this State of the amount of taxes and damages due thereon at the time of such redemption, within five years from the day this Constitution goes into operation; and all such lands not so released, exonerated or redeemed, shall be treated as forfeited, and proceeded against and sold as provided in the third section of this article.

6. The former owner of any tract of land in this State sold under the provisions of this article, shall be entitled to receive the excess of the sum for which such tract may be sold over the taxes and damages charged and chargeable thereon, and the costs, if his claim be filed in the Circuit Court which decreed the sale, within two years thereafter.

ARTICLE X.

EDUCATION.

1. All money accruing to this State, being the proceeds of forfeited, delinquent, waste and unappropriated lands; and of lands heretofore sold for taxes and purchased by the siate of Virginia, if hereafter redeemed, or sold to others than this State; all grants, devises or bequests that may be made to this State for the purposes of education or where the purposes of such grants, devises or bequests are not specified; this State's just share of the Literary fund of Virginia, whether paid over or otherwise liquidated, and any sums of money, stocks or property which this State shall have the right to claim from the State of Virginia for educational purposes; the proceeds of the estates of all persons who may die without leaving a will or heir, and of all escheated lands; the proceeds of any taxes that may be levied on the revenues of any corporation hereafter created; all monies that may be paid as an equivalent for exemption from military duty; and such sums as may from time to time be appropriated by the Legislature for the purpose, shall be set apart as a separate fund, to be called the School Fund, and invested under such regulations as may be prescribed by law, in the interest bearing securities of the United States, or of this State: and the interest thereof shall be annually applied to the support of free schools throughout the State, and to no other purpose whatever. But any portion of said interest remaining unexpended at the close of a fiscal year, shall be added to, and remain a part of, the capital of the School Fund.

2. The Legislature shall provide, as soon as practicable, for the establishment of a through and efficient system of free schools. They shall provide for the support of such schools by appropriating thereto the interest of the invested school fund, the net proceeds of all forfeitures, confiscations and fines accruing to this State under the laws thereof; and by general taxation on persons and property, or otherwise. They shall also provide for raising, in each township, by the authority of the people thereof, such a proportion of the amount required for the support of free schools therein as shall be prescribed by general laws.

3. Provision may be made by law for the election and prescribing the powers, duties and compensation of a General Superintendent of free schools for the State, whose term of office shall be the same as that of the Governor; and for a County Superintendent for each county; and for the election, in the several townships, by the voters thereof, of such officers, not specified in this Constitution, as may be necessary to carry out the objects of this article; and for the organization, whenever it may be deemed expedient, of a State Board of Instruction.

4. The Legislature shall foster and encourage moral, intellectual, scientific and agricultural improvement; they shall, whenever it may be practicable, make suitable provisions for the blind, mute and insane, and for the organization of such institutions of learning as the best interests of general education in the State may demand.

ARTICLE XI.

MISCELLANEOUS.

1. No lottery shall be authorized by law; and the buying, selling or transferring of tickets or chances in any lottery shall be prohibited.

2. No charter of incorporation shall be granted to any church or religious denomination. Provision may be made by general laws for securing the title to church property, so that it shall be held and used for the purposes intended.

3. The Circuit Courts shall have power, under such general regulations as may be prescribed by law, to grant divorces, change the names of persons, and direct the sales of estates belonging to infants and other persons under legal disabilities, but relief shall not be granted by special legislation in such cases.

4. Laws may be passed regulating or prohibiting the sale of intoxicating liquors within the limits of this State.

5. The Legislature shall pass general laws whereby any number of persons associated for mining, manufacturing, insuring or other purpose useful to the public, excepting banks of circulation and the construction of works of internal improvement, may become a corporation, on complying with the terms and conditions thereby prescribed; and no special act incorporating, or granting peculiar privileges to any joint stock company or association, not having in view the issuing of bills to circulate as money or the construction of some work of internal improvement, shall be passed. No company or association, authorized by this section, shall issue bills to circulate as money. No charter of incorporation shall be granted under such general laws, unless the right be reserved to alter or amend such charter at the pleasure of the Legislature, to be declared by general laws. No act to incorporate any bank of circulation or internal improvement company, or to confer additional privileges on the same, shall be passed, unless public notice of the intended application for such act be given under such regulations as shall be prescribed by law.

6. For the election of representatives to Congress, the State shall be divided into districts, corresponding in number with the representatives to which it may be entitled; which districts shall be formed of contiguous counties and be compact. Each district shall contain, as nearly as may be, an equal federal number, to be determined according to the rule prescribed in the second section of the first article of the Constitution of the United States.

7. The children of slaves born within the limits of this State after the fourth day of July, eighteen hundred and sixty-three, shall be free; and all slaves within the said State who shall, at the time aforesaid, be under the age of ten years, shall be free when they arrive at the age of twenty-one years; and all slaves over ten and under twenty-one years, shall be free when they arrive at the age of twenty-five years; and no slave shall be permitted to come into the State for permanent residence therein.

[This section as originally adopted was as follows:

"7. No slave shall be brought, or free person of color be permitted to come, into this State for permanent residence."

The act of Congress admitting West Virginia into the Union, made it a condition of such admission, that this section should be stricken out, and the seventh section as it now stands, substituted. It was to make this proposed change that the Convention was re-assembled February twelfth, eighteen hundred and sixty-three. The convention agreed to the amendment February seventeenth, eighteen hundred and sixty-three, and it was ratified by the people on the twenty-sixth day of the following March.]

8. Such parts of the common law and of the laws of the State of Virginia as are in force within the boundaries of the State of West Virginia, when this Constitution goes into operation, and are not repugnant thereto, shall be and continue the law of this State until altered or repealed by the Legislature. All offences against the laws of Virginia heretofore committed within the boundaries of this State shall be cognizable in the courts of this State, in the same manner they would be if hereafter committed within this State. All civil and criminal suits and proceedings pending in the County or Circuit Courts of the State of Virginia, held within the said boundaries, shall be docketed and thereafter proceeded in before the Circuit Court of the proper county; and all such suits and proceedings pending in the Supreme and District Courts of Appeals of the State of Virginia, if the defendant in the court below resides within the said boundaries, or the subject of the suit is land or other property situated or being therein, and the plaintiff is entitled to prosecute in this State, shall be docketed, and thereafter proceeded in before the Supreme Court of Appeals thereof.

9. The records, books, papers, seals and other property and appurtenances of the former Circuit or County Courts, within the State of West Virginia, shall be transferred to, and remain in, the care and custody of the Circuit Courts of the respective counties; to which all process outstanding at the time this Constitution goes into operation shall be returned, and by which new process in suits then pending, or previously determined, in the said former Courts, may be issued in proper cases. Copies and transcripts of the records and proceedings of the said former Courts shall be made and certified by the Courts having the care and custody of such records and proceedings, or the proper officers thereof, and shall have the same force and effect as if they had been heretofore properly made and certified by the said former Courts.

ARTICLE XII.

AMENDMENTS.

1. No Convention shall be called, having the authority to alter the Constitution of the State, unless it be in pursuance of a law passed by the affirmative vote of a majority of the members elected to each branch of the Legislature, and providing that polls shall be held throughout the State, on the same day therein specified, which shall not be less than three months after the passage of such law, for the purpose of taking the sense of the voters on the question of calling a Convention. And such Convention shall not be held unless a majority of the votes cast at such polls be in favor of calling the same; nor shall the members be elected to such Convention, until at least one month after the result of the polls shall be duly ascertained, declared and published. And all acts and ordinances of the said Convention shall be submitted to the voters of the State for ratification, or rejection, and shall have no validity whatever, until they are ratified, and in no event shall they, by any shift or device, be made to have any retrospective operation or effect.

2. Any amendment to the Constitution of the State may be proposed in either branch of the Legislature; and if the same, being read on three several

days in each branch, be agreed to on its third reading, by a majority of the members elected thereto, the proposed amendment, with the yeas and nays thereon, shall be entered on the journals, and referred to the Legislature at the first session to be held after the next general election; and shall be published, at least three months before such election, in some newspaper in every county in which a newspaper is printed. And if the proposed amendment be agreed to during such session, by a majority of the members elected to each branch, it shall be the duty of the Legislature to provide by law for submitting the same to the voters of the State, for ratification or rejection. And if a majority of the qualified voters, voting upon the question at the polls held pursuant to such law, ratify the proposed amendment, it shall be in force from the time of such ratification, as a part of the Constitution of the State. If two or more amendments be submitted at the same time, the vote on the ratification or rejection, shall be taken on each separately.

SCHEDULE TO ORIGINAL CONSTITUTION.

1. The President of this Convention, shall authenticate by his signature, attested by the Secretary, three originals of the foregoing Constitution with this Schedule annexed, and shall deliver one of them to the Governor of Virginia, and the others to the Commissioners hereinafter appointed.

2. It shall be the duty of John Hall, James W. Paxton, Peter G. Van Winkle, Elbert H. Caldwell and Ephraim B. Hall, who are hereby appointed Commissioners, and a majority of whom may act, to cause this Constitution and Schedule to be published in such newspapers, printed within the proposed State of West Virginia as they may deem proper, and to distribute the printed copies of the Constitution provided by this Convention.

3. Poll books, with the oaths and forms of returns herein required, attached thereto, shall be prepared under the direction of the Commissioners, for each place of voting in the fifty-one counties proposed to be included in the said State, which books shall contain two separate columns, one to be headed "For the Constitution," and the other "Against the Constitution." The Commissioners and officers who superintended and conducted the election in October last, for Delegates to this Convention, or such other persons as the Governor of Virginia, or the Commissioners hereby appointed, may appoint, shall attend at their respective places of holding elections, and superintend and conduct the election herein provided for; and if they fail to attend or act, any two freeholders present may act as Commissioners, administer to each other the prescribed oaths, and appoint and qualify a conducting officer and clerks to record the votes.

4. Said election shall be held on the first Thursday of April next, and for the causes prescribed in the Code of Virginia, the polls may be kept open three days; and if, at the time of said election, there be in any of the said counties any military or hostile assemblage of persons, or other cause to interfere with a free expression of the will of the voters, they may assemble at any other place within, or convenient to their respective counties, and hold an election as herein provided for; and if from any cause the said election be not held in and for any of the said counties, at the time named, the same

may be held at such subsequent time or times as the Commissioners hereby appointed may approve, if so done as not to delay the submission of the result to the Legislature for its action.

5. The persons who shall hold the elections as aforesaid shall each, before entering on the duties of his office, take, in addition to the oaths now prescribed by law, the following oath or affirmation, namely: "I solemnly swear (or affirm) that I will support the Constitution of the United States, and the laws made in pursuance thereof, as the supreme law of the land, anything in the Constitution and laws of the State of Virginia, or in the ordinances of the Convention which assembled at Richmond on the thirteenth day of February, one thousand eight hundred and sixty-one, to the contrary notwithstanding."

As early as practicable after the said elections, the persons holding the same shall ascertain the number of votes cast and recorded *for*, and the number *against*, this Constitution, and the expenses of such elections; and shall certify and return the same as soon as practicable, by mail or otherwise, to the persons conducting the election at the Court House of their county, who shall ascertain and certify the result for their county to the Commissioners hereby appointed. The certificate and returns of the persons holding elections shall be to the following effect: "We —— and ——, Commissioners, and ——, conducting officer, do certify that we caused an election to be held at —— in the county of ——, at which we permitted all persons to vote who desired, and were entitled to do so, and none other, and that we have carefully added each column of our poll books and find the following result:

For the Constitution —— votes.
Against the Constitution —— votes.
Given under our hands this —— day of ——, 1862.

—— —— ——

To which shall be added the following affidavit:

—— County, to-wit:

I, ——, a Justice, (or other officer authorized to administer oaths, or one of the acting Commissioners,) in and for said county, do hereby certify that the above named conducting officer this day made oath before me that the above certificate is correct and true.

Given under my hand this —— day of ——, 1862.

6. All persons qualified to vote under this Constitution shall be entitled to vote on the question of its adoption or rejection. The Commissioners hereby appointed shall provide for taking the vote of such of the voters as may, at the time of the said election, be in the armies or service of the United States, whether within or beyond the boundaries of the proposed State; and any voters who may be prevented by peril or other cause from voting in their respective counties, may vote at any place of voting in any other county, upon making oath that they have not elsewhere voted on the question.

7. The officers and Commissioners conducting the elections shall deposit their poll books with the Clerk of their County Court, subject to the order of the authorities of the State of West Virginia. The Commissioners hereby appointed shall ascertain and certify to the Governor of Virginia the result of the said election; and if the same result in the adoption of this Constitution by the voters of the forty-four counties first mentioned in the second section

of the first article thereof, they shall request him, as provided in the eighth section of the ordinance convening this Convention, to convene, and lay before the General Assembly of the State of Virginia, for its consent according to the Constitution of the United States, a certified original of this Constitution, with the result of the said election in all the counties voting, and to request the General Assembly, as provided in the tenth section of the said ordinance, to give its consent to the formation and erection of the State of West Virginia, as proposed, and forward to the Congress of the United States such consent, together with an official copy of this Constitution, with the request that the State of West Virginia may at once be admitted into the Union.

8. The Commissioners hereby appointed shall take such steps, and do all such things as they shall deem expedient, to procure, as soon as possible, the consent of the General Assembly and Congress, to the formation and erection of the State of West Virginia. The Legislature thereof, at its first session, shall provide for reimbursing the expenses incurred by the Commissioners in the discharge of the duties of their appointment, and may make them a reasonable compensation for their services.

9. When the General Assembly of the State of Virginia, and the Congress of the United States shall severally give their consent to the formation and erection of the State of West Virginia, as proposed, the Commissioners hereby appointed shall forthwith issue their proclamation, which shall be inserted for three or more successive weeks in the newspapers published within the limits of this State, declaring this Constitution in operation, and directing an election to be held in every county thereof, at the usual places of holding elections, on such day, not less than forty nor more than sixty days after the consent of Congress shall be obtained as aforesaid, as they shall appoint, and under the superintendence of such persons or former county officers as they shall designate, by name or otherwise, for the choice and election of Judges of the Circuit Courts, and all the State and county officers to be elected under this Constitution, except Supervisors, and shall cause to be done all things necessary for holding such election and ascertaining and certifying the result.

10. The duties to be performed by the persons holding and conducting said election, and the privileges of the voters shall be, in all things, as now prescribed by law, and in this Schedule.

11. The Commissioners hereby appointed shall have power, if deemed necessary, to reconvene the members of this Convention, on such day as they may prescribe; and if this Convention be so reconvened, the said Commissioners shall take the necessary steps to secure a representation therein from the counties proposed to be included in the new State, not at present represented, and to fill any vacancies which may occur.

12. If the first election of Senators, Delegates, Judges, and State and county officers is held within six months before the first day of January in any year, or within six months thereafter, their respective terms of service shall begin twenty days after such election, but shall end on the day they would have ended had they begun on the first day of January, except that the term of the Governor shall be counted from the fourth day of March next after the said first day of January.

13. The Legislature elected under this Schedule shall meet at the Seat of Government on the twenty-first day after their election.

14. All officers elected or appointed and qualified by authority of the State of Virginia, who shall remain in the exercise of the functions of their respective offices within the limits of this State, until this Constitution goes into operation, may continue to exercise the same within their respective counties, under the authority and in the name of this State, until the officers first elected or appointed under this Constitution for the discharge of similar duties are qualified.

AN ORDINANCE.

To provide for submitting to the People of West Virginia the amended Constitution.

Passed February 16, 1863.

Sec. 1. Poll books with the proper forms of oaths and returns attached, shall be prepared under the direction of the Executive Committee hereinafter named, for every place of voting in the forty-eight counties proposed to be included in the State of West Virginia; which books shall contain two columns, one to be headed, "For the Amended Constitution," and the other, "Against the Amended Constitution;" and the names of all qualified voters who vote in favor of the ratification of the Amended Constitution of West Virginia, shall be written in the first column, and of those who vote against such ratification, in the second column, under the respective headings aforesaid.

Sec. 2. The Executive Committee, hereinafter named, shall appoint three persons in each of the said forty-eight counties, (any two of whom may act, and who may fill vacancies in their own body) as superintendents of the polls hereby directed to be taken in the county; and shall furnish them with the proper poll books for every place of voting in said county at which a separate poll is to be taken. The superintendents for each county shall appoint three commissioners (any two of whom may act) and a conductor for every place of voting in such county, to superintend and conduct the polls to be held at such place, and shall distribute to them the proper poll books.

Sec. 3. In default of such appointment for any county or place of voting, the officers who superintended and conducted the polls in April last on the question of the ratification of the Constitution of West Virginia, at any place of voting in said forty-eight counties, shall attend at such place, and superintend and conduct the polls hereby directed to be taken.

Sec. 4. If there be at any place of voting, at the time the polls should be opened, but one commissioner willing to act, he may associate with himself as a commissioner any freeholder of the county then present; and if there be no commissioner present willing to act, then any two freeholders of the county present, and agreeing to act, shall be commissioners.

Sec. 5. The commissioners superintending the polls at any place of voting, are hereby authorized to administer the proper oaths to each other, and to the conductor and clerks. If there be no conductor present willing to act, they may appoint one, and they may also appoint clerks to record the votes. They shall admit all persons to vote entitled to do so, and shall reject the votes of all not entitled, and in all respects have the polls taken fairly, according to law. They may swear any person to answer questions in relation to any right to vote which is claimed; and the name of every person offering to vote, but rejected by them, if required by such person, shall be entered in a separate list on the poll book, showing the vote he desired to give.

Sec. 6. The said polls shall be taken on Thursday, the twenty-sixth day of March next. They shall not be opened sooner than sunrise, and shall be closed at sunset. But if it shall appear to the commissioners superintending the polls at any place of voting, that the persons entitled to vote thereat cannot all be polled before sunset, or that many of those entitled to vote were prevented from attending by rain, rise of water courses, or just apprehension of their personal safety, they shall keep the polls open for three days, including the first. And if on the day appointed for taking the polls there be a rebel force rendering it dangerous to hold the same at any place of voting in the said forty-eight counties, the voters may hold the said polls at any place within, or convenient to their respective counties: and any voter prevented from voting on the said question in the county where he resides, by just apprehension of personal danger, or any other cause, may vote in any other county upon making oath that he is entitled to vote on the question of the ratification of the Amended Constitution of West Virginia, and that he has not voted, and will not vote elsewhere on that question.

Sec. 7. Every superintendent, commissioner, conductor and clerk shall before entering on the discharge of his duties, take the following oath or affirmation: "I do solemnly swear (or affirm) that in the polls about to be taken, I will faithfully, impartially and fairly discharge the duties pertaining to my office, according to law. And that I will support the Constitution of the United States, and the laws made in pursuance thereof, as the supreme law of the land, anything in the constitution and laws of the State of Virginia, or in the ordinances of the convention which assembled at Richmond on the thirteenth day of February, one thousand eight hundred and sixty-one, to the contrary notwithstanding."

Sec. 8. Immediately after the polls at any place of voting, shall be closed, the commissioners superintending such polls, and officers conducting the same, shall make and subscribe a certificate to the following effect: "We A B and C D, commissioners, and E F, conductor, for taking the polls at ——, in the county of ——, do hereby certify that we have fairly and impartially taken the said polls, this —— day of ——, according to law, and that the result thereof, as more fully shown by the poll books hereto attached, is —— votes for the Amended Constitution of West Virginia, and —— votes against the same." In the said certificate the number of votes shall be written out in words at length. And the commissioners and conductors shall, within six days after the polls are closed, cause the poll books and certificates to be delivered to the superintendents of the polls for the county; who shall, as soon as possible thereafter, transmit their certificates of the number of votes cast within the county for and against the Amended Constitution, to the President of this convention, at the city of Wheeling, and deliver the poll books to the clerk of their county court, to be held subject to the order of the Executive Committee.

Sec. 9. All persons qualified to vote under the Amended Constitution shall be entitled to vote on the question of its ratification. And the Executive Committee shall provide for taking, at any time from the twelfth to the twenty-sixth of March next, including both of the said days, and for certifying and returning the votes of such persons, qualified as aforesaid, as may, at the time the polls are to be taken on the said question, be in the armies or service of the United States, whether within or beyond the boundaries of the proposed State of West Virginia; but any votes so taken beyond the said boundaries shall be distinctly so stated in the certificate of the returns thereof.

Sec. 10. The returns made as aforesaid to the President of this Convention, shall be opened by him, and the result ascertained, in the presence of the Executive Committee. And if it shall appear that a majority of the votes cast at the polls to be taken as aforesaid, within the limits of the State of West Virginia, be in favor of the ratification of the said Amended Constitution, then the President of this Convention shall, under his hand, certify to the President of the United States, that the people of West Virginia, through this Convention, and by a vote taken at an election held within the limits of said State, at the time for that purpose provided by this Convention, have made and ratified the change in the Constitution of the said State of West Virginia, proposed in the act of the Congress of the United States, approved December thirty-first, eighteen hundred and sixty-two, entitled "An Act for the admission of West Virginia into the Union and for other purposes," which certificate shall be countersigned by said Executive Committee.

Sec. 11. It shall be the duty of James W. Paxton, Peter G. Van Winkle, Elbert H. Caldwell, Ephraim B. Hall and Daniel Lamb, who are hereby appointed a committee for the purpose, to be called the Executive Committee of this Convention, and who may fill vacancies in their own body, and a majority of whom may act, to take such measures and do all such things, not inconsistent with this Ordinance, as they may deem expedient, to cause the said polls to be fully, fairly and impartially taken in every part of the proposed State of West Virginia, and to procure the admission of the said State into the Union if the Amended Constitution thereof be ratified by the people. And the said Executive Committee shall have power, in their discretion, to re-convene the members of this Convention on such day as they shall prescribe; and if it be so re-convened, shall adopt proper measures to secure a representation therein from the counties proposed to be included in the said State not at present represented, and to fill any vacancies that may occur.

AN ORDINANCE

To provide for the Organization of the State of West Virginia.

Passed February 19, 1863.

Sec. 1. When the President of the United States issues his proclamation under the Act of Congress, approved December thirty-one, eighteen hundred and sixty-two, entitled "An Act for the admission of the State of West Virginia into the Union and for other purposes," then an election shall be held on the Thursday next succeeding the thirty-fifth day from the date of said proclamation, at the several places of voting in the forty-eight counties to be included in the said State, for the election, under the Amended Constitution thereof, of Senators and Delegates, a Governor, Secretary of the State, Treasurer, Auditor and Attorney General, three Judges of the Supreme Court of Appeals, a Judge for each Circuit, and the following officers for each county, that is to say, a Clerk of the Circuit Court, Sheriff, Prosecuting Attorney, Surveyor of Lands, and Recorder.

Sec. 2. The terms of office of the persons then to be elected shall commence on and include the sixty-first day from the date of said proclamation; but shall continue, and be computed, as if the same had begun on the first day of January, one thousand eight hundred and sixty-three; except that the terms of the Governor, Secretary of the State, Treasurer and Auditor, shall continue, and be computed, as if the same had begun on the fourth day of March, one thousand eight hundred and sixty-three.

Sec. 3. As soon as possible after the President of the United States issues his said proclamation, the Executive Committee of this Convention shall, by their proclamation, give notice of the election to be held as aforesaid, stating the time when the same is to be held, and the different offices to be filled. And the said Executive Committee, after the issuing of the said proclamation by the President of the United States, shall have authority to take such measures and do all such things, not inconsistent with the Amended Constitution or with this Ordinance, as may be requisite to cause the said election to be fairly and impartially held and returned in every part of the said forty-eight counties, and to carry into operation the said Amended Constitution. But the authority hereby granted to the said Executive Committee shall cease and determine as soon as the Legislature of West Virginia is assembled and organized.

Sec. 4. The said election shall be held, and the results thereof ascertained, certified and returned, according to the following directions, that is to say:

I. Poll books, with the proper forms of oaths and returns, shall be prepared under the direction of the Executive Committee of this Convention, for every place of voting in the said forty-eight counties.

II. The said Executive Committee, as soon as possible after the President of the United States issues his said proclamation, shall appoint three persons in each of the said counties as *Superintendents of the election for the county*, and furnish them with the proper poll books and forms. Any two of the superintendents for a county may act, and they may fill vacancies in their own body. The superintendents for each county, shall, for every place of voting in their county, appoint *three commissioners*, any two of whom may act, and a *conductor*, to superintend and conduct the elections at the place for which they are appointed; and shall furnish them with the proper ballot-boxes, poll books and forms.

III. In default of such appointment for any county, or place of voting, the officers who may superintend and conduct the polls to be taken on the twenty-sixth day of March next, on the question of the ratification of the Amended Constitution, at any place of voting in the said forty-eight counties, shall procure proper ballot-boxes, poll books and forms, and attend therewith at such place, and superintend and conduct the election, and make due return thereof.

IV. If at any place of voting there be, at the time the polls should be opened, but one commissioner willing to act, he shall associate with himself, as a commissioner, some freeholder of the county then present; and if there be no commissioner present willing to act, any two freeholders of the county present and willing to act, shall be commissioners.

V. The commissioners at any place of voting are hereby authorized to administer the proper oaths to each other, and to the conductor and clerks. If there be no conductor present willing to act, they may appoint one. They may also appoint clerks to record the names of the voters, assist in counting the ballots, ascertaining the result and making proper return thereof. They shall admit all persons to vote entitled to do so under the first section of the third article of the Amended Constitution, and shall reject the votes of all not so entitled, and in all respects have the said election fairly and impartially held and returned according to law. They may swear any person to answer questions in relation to any right to vote which is claimed; and the name of every person offering to vote, who is rejected by them, shall, if required by such person, be entered on a separate list on the poll books, under the heading, *Rejected voters;* and in such case the ballot offered shall be sealed up and endorsed on the envelope or cover as follows: "The ballot of A B, rejected this —— day of ———, 1863," and returned along with the other ballots.

VI. The polls shall not be opened sooner than sunrise, and shall be closed at sunset. But if it appear to the commissioners at any place of voting, that the persons present entitled to vote at such place cannot all be polled before sunset, or that many were prevented from attending by rain, rise of water courses, or just apprehension of personal danger, they may keep the polls open for three days, including the first.

VII. Every superintendent, commissioner, conductor and clerk, before entering on the discharge of his duties, shall take the following oath or affirmation: "I swear (or affirm,) that in the election about to be held, I will faithfully, fairly and impartially discharge the duties of my office according to law; and that I will support the Constitution of the United States, and the laws made in pursuance thereof as the supreme law of the land, anything in the Constitution and laws of the State of Virginia, or in the Ordinances of the Convention which assembled at Richmond on the thirteenth day of February, eighteen hundred and sixty-one, to the contrary notwithstanding."

VIII. The superintendents of the election for each county shall cause to be delivered to the commissioners for every place of voting in said county, a proper ballot-box, with an aperture in the lid thereof, for the purpose of receiving the ballots of those entitled to vote; which ballot-box, while the polls are open, shall be kept by the commissioners in a place where it may be seen by the voters. Every person desiring to vote, shall offer to the conductor a single ballot or piece of paper, on which there is printed or written the names of all the persons for whom he wishes to vote, with a proper designation of the office each is intended to fill. The ballot shall be rolled up or folded, so that the contents may not be seen. The conductor shall then proclaim the name of the person offering to vote, and deliver the ballot to one of the commissioners. The commissioners may inspect such ballot so far only as to ascertain if it be single, but without opening or unrolling it; and if satisfied it is single, and that the person offering the same is entitled to vote at the said polls, one of them shall put the ballot into the ballot-box through the aperture in the lid, and the name of the voter shall be entered on the poll books under the following heading: "Names of the voters at ——, in the county of ——, on the —— day of ——, 1863."

IX. As soon as the polls, at any place of voting, are finally closed, the names of the voters entered on the poll books shall be counted, and the number thereof set down in words at length, at the foot of the list; which shall then be signed by the commissioners and conductor, and countersigned by the clerk or clerks who kept such list. The ballot-box shall then be opened by the commissioners, and one of them shall take out the ballots, one at a time, and read therefrom, distinctly, the names of the persons voted for, and the designation of the office each is intended to fill, and deliver the same to the other commissioner or commissioners, who, having examined it, and being satisfied that the vote was correctly announced, shall pass it to the conductor, to be strung by him upon a thread, and carefully preserved. The ballots, as they are announced, shall be entered by the clerks, under the direction and supervision of the commissioners, in such manner as to show the number of votes received by each person for any office to be filled; and the said executive committee may prescribe proper forms and regulations for the purpose.

X. Whenever two or more ballots are found folded or rolled up together, they shall be rejected; and if a ballot be found to contain more than the proper number of names for any office, it shall not be counted as to said office.

XI. When the result is ascertained, the commissioners and conductor shall immediately make and subscribe two certificates to the following effect, viz: "We, the undersigned commissioners and conductor of the election held at ——, in the county of ——, this —— day of ——, 1863, do hereby certify that we have fairly and impartially held the said election according to law, and that the result thereof is as follows, that is to say: For Senator A B received —— votes, and C D —— votes; For Delegate, E F received —— votes, and G H —— votes; For Governor, I J received —— votes, and K L —— votes;" and so on throughout, according to the truth, stating the name of every person voted for, and the number of votes received by each person for any office. The ballots shall then be delivered up to the commissioners, who shall seal up the same in an envelope or cover, writing their names across the seals and endorsing on the envelope or cover: "Ballots at the election held at ——, in the county of ——, on the —— day of ——, 1863."

The ballots so sealed up, the poll books, and one of the certificates signed as aforesaid, shall be delivered by the commissioners and conductor, or one of them, within six days after the polls are closed, to the superintendents of the election for the county, or one of them; and the conductor shall retain and carefully preserve the other certificate subject to the order of the superintendents of the election for the county.

XII. The superintendents of the election for each county shall, as soon as the returns are received by them as aforesaid, carefully and impartially ascertain therefrom the result of the election in their county as to all the offices to be filled; for which purpose they may, if found necessary, open and examine the sealed packages of ballots delivered to them, but in such case they shall carefully seal up the same in another envelope or cover, enclosing the original envelope or cover, and write their names across the seals, and endorse on the outside, "Ballots at the election held at ——— in the county of ———, on the ——— day of ———, 1863, opened by A B and C D, superintendents, this ——— day of ———, 1863."

XIII. The said superintendents shall, as soon as possible thereafter, cause to be delivered to each of the persons who shall appear to have received, within the county, the highest number of votes as Delegate, Clerk of the Circuit Court, Sheriff, Prosecuting Attorney, Surveyor of Lands, or Recorder, a certificate signed by the said superintendents, to the following effect, viz: "We the undersigned, superintendents of the election held in the county of ———, on the ——— day of ———, 1863, having carefully and impartially examined the returns made to us of the said election, do hereby certify that for the office of Delegate for said county, (or Clerk of the Circuit Court for said county, Sheriff of said county, or otherwise, as the case may be,) A B received at the said election, ——— votes, C D ——— votes, and E F ——— votes, and that the said A B having received the highest number of votes, is, therefore duly elected to the said office. Given under our hands this ——— day of ———, 1863."

XIV. But where two or more counties are included in a district for the election of Delegates to the Legislature, under the tenth section of the fourth article of the Amended Constitution, the result of the election for Delegates in such District shall be ascertained and certified as follows: One of the superintendents of the election for each county in the Delegate district, shall meet together on the tenth day after the election, as follows, viz: The superintendents for Pleasants and Wood counties shall meet at the Court House of Wood county; those of Calhoun and Gilmer, at the Court House of Gilmer county; those of Clay and Nicholas, at the Court House of Nicholas county; those of Webster and Pocahontas, at the Court House of Pocahontas county; those of Tucker and Randolph, at the Court House of Randolph county, and those of McDowell, Wyoming and Raleigh, at the Court House of Wyoming county, or at such other convenient place as they may have previously agreed upon among themselves; and shall there together carefully and impartially examine the returns received by them of the election in their respective counties for delegate or delegates of the district, and give to the person or persons who shall appear to have received the highest number of votes in the district for that office, a certificate, signed by them, to the following effect, viz: "We, the undersigned, superintendents for the county of ———, and superintendents for the county of ———, of the election held on the —— day of ——, eighteen hundred and sixty-three, having together carefully and impartially examined the returns made to us of the election for Delegates of the district composed of the said counties, do hereby certify, that for the office of Delegate of said district A B received —— votes, and C D —— votes, and that the said A B having received the highest number of votes, is, therefore, duly elected to the said office. Given under our hands, this —— day of ——, 1863."

XV. If for any cause the superintendents of the election for the counties included in a delegate district fail to meet as aforesaid, then it shall be the duty of the superintendents of each of the said counties immediately to transmit their certificate of the result, within their county, of the election for Delegate of the district, to the Executive Committee of this Convention, observing, as far as possible, the directions specified in the said next succeeding paragraph of this Ordinance.

XVI. The superintendents of the election for each of the said forty-eight counties shall, as soon as possible after the returns of their county are received by them, carefully and impartially ascertain therefrom the result, within their county, of the election for Senator, Governor, Secretary of the State, Treasurer, Auditor, Attorney General, Judges of the Court of Appeals, and Judge for the Circuit, and forthwith make and sign two certificates thereof to the following effect, viz: "We, the undersigned, superintendents of the election held in the county of —— this —— day of ——, 1863, having carefully and impartially examined the returns made to us of the said election, do hereby certify that in our said county, for Senator of this district, A B received —— votes, and C D —— votes; for Judge for this Circuit, E F received —— votes, and G H —— votes; for Governor of the State, I J received —— votes, and K L —— votes;" and so on throughout according to the truth; and concluding the certificate as follows: "Given under our hands this —— day of ——, 1863." And the said superintendents shall then, without delay, seal up one of their said certificates in an envelope addressed "To the Executive Committee, Wheeling, West Virginia," and write their names across the seals, and transmit the same by mail or some other speedy and safe conveyance to the Executive Committee of this Convention; and shall retain and carefully preserve the other certificate, subject to the order of the said Executive Committee, or of the Legislature of West Virginia.

XVII. In all the certificates herein before required to be made, wherever the number of votes for any person is to be stated, such number shall be written out in words at length, and also stated in figures.

XVIII. The Executive Committee shall carefully and impartially examine the returns made to them as aforesaid, and may, if necessary or proper, send for the poll books, ballots and duplicate certificates of any one or more counties. They shall give notice of their election to the persons appearing to be elected; but shall submit all the returns and evidences of the election in their hands to the Legislature of West Virginia as soon as it is organized; who shall, by joint resolution, declare the result, except that as to members of the Legislature, each branch, pursuant to the Amended Constitution, shall be the judge of the elections, qualifications and returns of its own members.

XIX. The poll books and ballots for each county shall be returned to and carefully preserved by the Clerk of the County Court for such county, to be transferred to the Recorder of the county when elected and qualified; or to the Executive Committee at the City of Wheeling, in case there be no such clerk.

XX. If two or more persons have an equal and the highest number of votes, the person authorized to give the certificate or notice of election, shall decide by lot to whom the certificate or notice shall be given.

XXI. Any person in the service of the United States as a soldier, or officer of the Virginia militia, who has been a resident of the State of West Virginia for one year, and of the county in which he offers to vote, for thirty days before he entered such service, and is otherwise qualified, may send his ballot in a sealed envelope with his name endorsed thereon, to the superintendents of the election for the county in which he resided; and if a majority of the superintendents are satisfied that the person so transmitting his ballot is a citizen of the United States, and was, at the time he entered such service a resident as aforesaid of the State and county, and is at the time of the election qualified to vote, they shall deposit his ballot in the ballot-box at some place of voting in the county on the day of the election, and the name of the person so voting shall be entered on the poll books, to have the same effect as if the ballot had been given by the voter in person.

Sec. 5. The Senators and Delegates shall assemble at the city of Wheeling on the sixty-first day after the President of the United States shall have issued his proclamation, at eleven o'clock in the forenoon, and proceed to organize themselves, in their respective branches, as the Legislature of West Virginia. It shall be the duty of the said Executive Committee to provide suitable rooms and accommodations for each Branch.

Sec. 6. All officers acting within the said forty-eight counties by the authority of the laws of Virginia at the time the Amended Constitution of West Virginia goes into operation, shall continue to exercise the powers and perform the duties of their respective offices, in the name and under the authority of the State of West Virginia, until the officers elected or appointed under the Amended Constitution for the discharge of similar duties be qualified.

Sec. 7.—The schedule annexed to the original Constitution is hereby repealed; but such repeal shall not affect any act done in pursuance of said schedule.

ACTS

OF THE

LEGISLATURE

OF

WEST VIRGINIA,

AT ITS

FIRST SESSION,

COMMENCING JUNE 20, 1863.

WHEELING.

1863.

3

ACTS.

CHAP. 1.—An ACT in relation to the powers and duties of the Recorder.

Passed June 26, 1863.

Be it enacted by the legislature of West Virginia:

1. The recorder of every county shall have the same powers and perform the same duties, in relation to receiving acknowledgment or proof of, admitting to record, recording, listing and certifying deeds, contracts, powers of attorney, wills, inventories and other writings; and docketing judgments and decrees, and bonds and recognizances having the force of judgments; and recording *lis pendens* and attachments; and the issuing of marriage licenses, as the clerk of the county court of such county had or was liable to perform, under the laws of Virginia, in force within the limits of this state, on the nineteenth day of June, eighteen hundred and sixty-three; and shall have the like fees for his services as the said clerk was entitled to under said laws, to be collected and accounted for in the same manner.

In what cases the recorder is to act in place of clerk of county court.

And to have the same fees.

2. The parties in charge thereof shall deliver to the recorder of the proper county the books of records of deeds, contracts, powers of attorney, wills, inventories and other writings, and the books in which judgments, decrees, and bonds, and recognizances having the force of judgments, *lis pendens* and attachments, are entered or docketed, and all the other books and papers relating to the duties of his office.

Records to be delivered over to the recorder.

3. The acts and certificates of the said recorder shall have the same effect as the acts and certificates of the said clerk would have had under the said laws.

Effect of recorder's acts and certificates.

4. This act shall be in force from its passage.

CHAP. 2.—An ACT concerning Oaths and Affirmations.

Passed June 26, 1863.

Be it enacted by the Legislature of West Virginia, as follows:

1. Every person elected or appointed to any office or trust, civil or military, shall, before proceeding to exercise the authority or discharge the duties of the same, make oath that he will support the constitution of the United States and the constitution of this state.

General provision as to all officers.

2. He shall also, at the same time, take an oath that he will faithfully perform the duties of his office, to the best of his skill and judgment.

Same.

Officers acting in other states.

3. The first section shall not apply to the case of a person residing in another state or country who is appointed a commissioner by the governor, or designated, pursuant to law, for any agency or service to be performed out of this state.

Who may administer official oaths.

4. The oaths to be taken as aforesaid, may be administered by a justice, notary public, recorder or judge. And any person residing in another state or country, designated for any agency or service to be performed out of this state, or appointed a commissioner, may take the oath before a justice, notary, or judge of the state or country in which he resides.

Penalty for acting in any office before taking the oath.

Officers of State of Virginia excepted.

5. If any person elected or appointed to any office or trust, civil or military, shall exercise any authority, or enter upon the discharge of any duty pertaining thereto, before taking the proper oath or oaths, he shall forfeit not less than one hundred nor more than one thousand dollars. But the officers acting within the limits of this state at the time the amended constitution thereof went into operation, may continue to exercise the powers and perform the duties of their respective offices, until the officers elected or appointed under the said constitution, for the discharge of similar duties, be qualified, without being liable to any forfeiture under this act.

Oath to be certified—certificates, how disposed of.

6. The oaths to be taken as aforesaid shall be certified by the persons who administered the same, and the certificates disposed of as follows:

State officers and clerks.

Other civil officers.

The certificates of the oaths taken by the governor, secretary of the state, treasurer, auditor, attorney general, and adjutant general, and of the clerks employed by them, and of all other civil officers except those afterwards mentioned in this section, shall be filed in the office of the secretary of the state.

Members of Legislature.

The certificates of the oaths taken by senators and delegates shall be filed with the clerks of those branches respectively; or the oaths shall be taken in presence of their respective branches, and the fact be noted on the journal.

Judges of Court of Appeals.

The certificates of the oaths taken by a judge of the supreme court of appeals shall be delivered to and recorded by the clerk of that court.

Circuit Judges.

The certificate of the oaths taken by a judge of a circuit, shall be delivered to and recorded by the clerk of the first court to be held by him.

Clerks of Courts.

The certificate of the oaths taken by the clerk of any court, shall be recorded by such clerk.

County, township and municipal officers.

The certificate of the oaths taken by county, township and municipal officers shall be filed with the recorder of the county.

Military officers.

The certificate of the oaths taken by any military officer above the rank of colonel, shall be filed with the adjutant general; and of any other military officer, shall be recorded in the order book of the commandant of the regiment to which such person belongs or is attached.

Affirmation to have the same effect as an oath.

7. Under this act, and in all judicial proceedings, a solemn affirmation shall have, in all respects, the same effect as an oath. And

Legal meaning of the word OATH or SWEAR.

in the construction of statutes, records, certificates and writings, the word *oath* shall be deemed to include an *affirmation*, and the word *swear* to be complied with, if the person referred to makes solemn affirmation, unless such construction be manifestly inconsistent with the intention.

Law repealed.

8. Chapter thirteenth of the code of Virginia, second edition, and all statutory provisions incorporated in said chapter, are hereby repealed.

9. This act shall be in force from its passage.

CHAP. 3.—An ACT in relation to the Taxes assessed within the several counties under the laws of the State of Virginia.

Passed June 26, 1863.

Be it enacted by the Legislature of West Virginia:

Commissioners' books for 1863 to be delivered to the new sheriffs.

Who are to collect the taxes for that year.

1. Every commissioner of the revenue for any county now included within this state, shall, within twenty days after the passage of this act, deliver one copy of the land book, and one of the personal property book, made by him for the year eighteen hundred and sixty-three, to the sheriff elected and qualified for such county under the constitution of this state and the ordinances of the late constitutional convention; and such sheriff shall proceed to collect, account for, and pay over according to law, the taxes assessed in the said books.

The former sheriffs not to collect such taxes.

2. No sheriff or collector of taxes elected or appointed for any county of this state, under the laws of the state of Virginia, shall have authority to collect the taxes assessed in the land or personal property books for the year eighteen hundred and sixty-three, if a sheriff shall have been elected and qualified for such county, under the constitution of this state and the ordinances aforesaid.

Arrears of 1861 and 1862 to be collected by new sheriffs.

3. The sheriffs, elected and qualified under the constitution of this state and the ordinances of the late constitutional convention, of those counties in which the taxes for the years eighteen hundred and sixty-one and eighteen hundred and sixty-two, in whole or in part, have not been collected, and where the commissioners' books have not been placed in the hands of a collecting officer, shall proceed to collect and account for the taxes for the years eighteen hundred and sixty-one and eighteen hundred and sixty-two.

4. This act shall be in force from its passage.

CHAP. 4.—An ACT to authorize the Council of the City of Wheeling to raise money by way of loan for the defense of the said city.

Passed June 26, 1863.

Be it enacted by the Legislature of West Virginia:

City of Wheeling authorized to borrow money for defense.

1. It shall be lawful for the council of the city of Wheeling to borrow money in the name of the said city for the defense thereof against

And to provide by tax, for interest and principal.

invasion; and to convey, mortgage and pledge any of the public property and revenues of said city, for the redemption of such loans and for payment of the interest thereon; and to levy and collect a special annual tax on the real estate in the said city, sufficient to produce over and above the expenses of collection, an annual sum equal to the interest and five per cent on the principal of any debt which may be contracted as aforesaid.

Banks, &c., authorized to lend the same.

2. It shall be lawful for any bank or branch, savings institution, insurance company, or other corporation in this state, and for any person or firm, to loan money for such time and on such terms as may be agreed upon, on any bond or bonds of the said city which may be issued for the purposes specified in this act.

3. This act shall be in force from its passage.

CHAP. 5.—An ACT relating to Official Bonds.

Passed June 29, 1863.

Be it enacted by the Legislature of West Virginia, as follows:

Official bonds to be payable to the State.

Sureties.

Acknowledgm't or proof required

1. Every bond required by law to be approved by any court, board or officer, shall, unless otherwise provided, be made payable to the state of West Virginia, with one or more sureties deemed sufficient by such court, board or officer, and be proved or acknowledged before such court, board or officer.

Suits thereon may be brought for any party injured.

2. Upon any bond payable as aforesaid, suits may be prosecuted, from time to time, in the name of the state, for the benefit thereof, or of any county, township or person injured by a breach of the condition, until damages be recovered equal to the penalty.

Declaration in such suits.

Security for costs

3. The declaration in such suit shall show for whose benefit it is prosecuted; and the court may, in its discretion, require security for the costs, from any party, except the state, for whose benefit such a suit shall be prosecuted.

Bonds not required to be payable to the State.

4. Any bond to be given upon an injunction, appeal, writ of error, supersedeas, or other proceeding in a civil suit, may be made payable to the party entitled to the benefit thereof; and any bond to be given by any officer of a municipal corporation, or which may lawfully be prescribed by the ordinances of such corporation, may be made payable to the said municipal corporation.

Condition of official bonds.

5. When a person undertaking any office is required by law to give bond, the condition, unless otherwise provided, shall be for the faithful discharge by him of the duties of his office.

The office vacated if bond be not given in time.

Penalty for acting without bond

6. When a person elected or appointed to any office is required by law to give bond, if he fail to do so within the time prescribed by law, the office shall be deemed vacant; and if he act in such office before giving bond as required by law, he shall forfeit not less than one hundred nor more than one thousand dollars.

7. Every person elected or appointed to any office shall be allowed sixty days after his election or appointment in which to qualify and give the bond of his office, unless otherwise provided. Time allowed for giving bond.

8. The sheriff of every county shall give bond, to be approved by the circuit court of the county, or the judge thereof in vacation, in such penalty, not less than twenty thousand dollars nor more than ninety thousand dollars, as the said court or judge shall deem sufficient. Sheriff's bond.

9. The clerk of the supreme court of appeals, unless he be clerk *pro tempore*, shall give bond, to be approved by the court, in such penalty, not less than three thousand nor more than ten thousand dollars, as the court shall deem sufficient; and the court may prescribe the time within which such bond shall be given. Clerk of court of appeals.

10. Every clerk of a circuit court, unless he be clerk *pro tempore*, shall give bond, to be approved by the court, or the judge thereof in vacation, in such penalty, not less than three thousand nor more than ten thousand dollars, as the court or judge shall deem sufficient. Clerk of circuit court.

11. The recorder of every county shall give bond, to be approved by the circuit court for such county, or the judge thereof in vacation, in such penalty, not less than three thousand nor more than ten thousand dollars, as the court or judge shall deem sufficient. Recorder.

12. Every notary public shall give bond, to be approved by the circuit court for his county, or the judge thereof in vacation, in such penalty, not less than two hundred and fifty nor more than one thousand dollars, as the court or judge shall deem sufficient. Notary public.

13. The secretary of the state, auditor, treasurer and public printer shall each give bond, to be approved by the governor. The bond of the secretary of the state shall be in the penalty of five thousand dollars, that of the auditor twenty thousand, of the treasurer twenty-five thousand, and of the public printer five thousand dollars. Secretary of the state, auditor, treasurer and public printer.

14. Every bond required by law to be approved by the governor, shall be first submitted to the attorney general for examination; and if he be of opinion that it is in proper form and legally executed, he shall make an endorsement thereon to that effect. Bonds to be submitted to attorney general.

15. The bonds of the treasurer, auditor and public printer shall be filed in the office of the secretary of the state; and the bond of the secretary of the state in the office of the auditor. The bond of the clerk of the supreme court of appeals shall be filed in the office of the clerk of the circuit court for the county in which the supreme court of appeals may sit. The bonds to be approved by the circuit court for any county, or the judge thereof in vacation, shall be filed in the office of the clerk of such circuit court; except that the bond of the clerk of the circuit court shall be filed in the office of the recorder of the county. Where official bonds are to be kept.

Penalty for failure to file official bonds.

16. Any officer giving bond, who shall fail to file the same as aforesaid, shall forfeit not less than one hundred nor more than one thousand dollars.

Copies to be transmitted to the auditor.

Penalty for failure.

Repealed

17. The clerk of every circuit court, and the recorder of every county shall, within two months after any bond is filed in their offices as aforesaid, transmit a copy thereof to the auditor. If any clerk or recorder fail so to do, he shall forfeit one hundred dollars.

Record of official bonds.

Effect of such record and certified copies.

18. The person in whose office any bond is filed, as aforesaid, shall cause the same to be correctly recorded, upon the endorsement thereon of its having been approved according to law. And such record, or a copy thereof, certified by the person in whose office the bond is required by law to be filed, shall be *prima facie* evidence of the execution and contents of such bond. But any court of record, for good cause shown, may require the production of the original bond.

A new official bond may be required at any time.

And the office vacated if not given.

19. The court, board or officer by whom any bond is required by law to be approved, may, at any time, require from the officer by whom such bond was given, a new bond to be approved by them. And if the officer so required to give a new bond, being notified of the requirement, fail to comply therewith within the time specified in such notice, his office shall be deemed vacant. But for cause shown, the time for giving such new bond may be extended or the requirement withdrawn.

Surety on official bond may be relieved therefrom on petition,

And office vacated if new bond be not given.

20. When a surety, or his personal representative, of any officer required by law to give an official bond, shall petition the court, board or officer by whom such bond was approved, to be relieved from the suretyship, such court, board or officer shall, on proof of reasonable notice of the intended motion, require a new bond to be given. And if any officer, who has given an official bond, being so required, shall fail to give a new bond, within the time required, his office shall be deemed vacant. But for cause shown, the time for giving such new bond may be extended.

Effect of new bond when given.

21. Upon new bond being given and approved according to law, in the cases specified in the last two sections, the sureties in the former bond, and their estates, shall be discharged from all liability for any breach of duty committed by such officer after that time.

Laws repealed.

22. The twenty-fourth section of the eighth chapter; the eighth, ninth, tenth and eleventh sections of the thirteenth chapter; the sixth, seventh, eighth and ninth sections of the eighteenth chapter; the first, second and third sections of the one hundred and forty-sixth chapter; the second section of the forty-ninth chapter, and the seventh section of the one hundred and sixty-third chapter of the code of Virginia, second edition; and the several statutory provisions incorporated in those sections; and also so much of the first section of the one hundred and twentieth chapter as relates to the bonds of notaries public, are hereby repealed.

23. This act shall be in force from its passage.

CHAP. 6.—An ACT making an appropriation of fifty thousand dollars for procuring arms, equipments, munitions of war, &c.

Passed July 2, 1863.

Be it enacted by the Legislature of West Virginia:

1. The sum of fifty thousand dollars is hereby appropriated out of any money in the treasury not otherwise appropriated, for the purpose of procuring arms, equipments and munitions of war, and for the payment of scouts or any company employed or ordered into the service of the State. And the auditor is required to pay the said appropriation upon the order or orders of the governor.

Appropriation to procure arms, &c

To be paid on order of the governor.

2. This act shall be in force from and after its passage.

CHAP. 7.—An ACT for the defense of the State.

Passed July 2, 1863.

Be it enacted by the Legislature of West Virginia:

1. The governor is hereby authorized to procure such arms, equipments and munitions of war as shall be necessary for the defense of the state. Such arms, equipments and munitions shall be issued or distributed by the governor to the loyal male citizens of such counties, and in such numbers and manner, as he may deem best.

Governor authorized to procure arms, &c.

How such arms, &c., are to be distributed.

2. Be it further enacted, That the governor be, and he is hereby authorized to cause to be organized within the several counties of this state, bands of minute men, of persons not subject to military duty, and to pay the same for actual service under such regulations as he may prescribe.

Organization of minute men.

Pay of same.

3. This act shall be in force from and after its passage.

CHAP. 8.—An ACT to fix the terms of the several Courts.

Passed July 9, 1863.

Be it enacted by the Legislature of West Virginia:

1. Two sessions of the supreme court of appeals shall be held every year at the seat of government, or such other place as may be appointed for the purpose in conformity with the eleventh, twelfth, and thirteenth sections of the one hundred and sixty-first chapter of the code of Virginia, second edition.

Two sessions of court of appeals every year. Where to be held.

2. The said sessions shall begin on the second Thursday of January and the second Thursday of July, respectively, and continue till the business be dispatched. When the circumstances require it, the governor may postpone the time for holding any such session.

The time of holding said sessions.

The governor may postpone the same.

3. A circuit court shall be held in every county four times a year; and the commencement of the said terms shall be as follows:

Four circuit courts to be held every year in each county.

I. In the First Circuit—for the county of Ohio, on the first Tuesday in March, May, October and December; for the county of Han-

First circuit. Ohio county. Hancock.

Brooke.
Marshall.

cock, on the first Tuesday of April, June, September and November; for the county of Brooke, on the second Tuesday of April, June, September and November; and for the county of Marshall, on the third Tuesday of April, June, September and November.

Second circuit.
Monongalia.
Taylor.
Tucker.
Preston.

II. In the Second Circuit—for the county of Monongalia, on the ninth day of February, the ninth day of May, the tenth day of August and the ninth day of November; for the county of Taylor, on the twenty-third day of February, the twenty-fifth day of May, the twenty-fourth day of August and the twenty-third day of November; for the county of Tucker, on the ninth day of March, the fifth day of June, the seventh day of September and the seventh day of December; and for the county of Preston, on the sixteenth day of March, the thirteenth day of June, the fourteenth day of September and the fourteenth day of December.

Third circuit.
Barbour.
Harrison.
Marion.

III. In the Third Circuit—for the county of Barbour, on the first day of March, the sixteenth day of May, the first day of September and the sixteenth day of November; for the county of Harrison, on the twelfth day of March, the first day of June, the sixteenth day of September and the first day of December; and for the county of Marion, on the first day of April, the sixteenth day of June, the first day of October and the sixteenth day of December.

Fourth circuit.
Wetzel.
Pleasants.
Ritchie.
Gilmer.
Tyler.
Doddridge.

IV. In the Fourth Circuit—for the county of Wetzel, on the first day of March, and the same day of May, September and November; for the county of Pleasants, on the tenth day of March, and the same day of May, September and November; for the county of Ritchie, on the eighteenth day of March, and the same day of May, September and November; for the county of Gilmer, on the thirtieth day of March, and the same day of May, September and November; for the county of Tyler, on the eighth day of April, and the same day of June, October and December; and for the county of Doddridge, on the twentieth day of April, and the same day of June, October and December.

Fifth circuit.
Lewis.
Upsher.
Randolph.
Braxton.
Nicholas.
Webster.

V. In the Fifth Circuit—for the county of Lewis, on the first day of March, and the same day of May, September and November; for the county of Upshur, on the fifteenth day of March, and the same day of May, September and November; for the county of Randolph, on the twenty-seventh day of March, and the same day of May, September and November; for the county of Braxton, on the ninth day of April, and the same day of June, October and December; for the county of Nicholas, on the sixteenth day of April, and the same day of June, October and December; and for the county of Webster, on the twenty-third day of April, and the same day of June, October and December.

Sixth circuit.
Jackson.
Roane.
Calhoun.
Clay.

VI. In the Sixth Circuit—for the county of Jackson, on the first day of March, and the same day of May, September and November; for the county of Roane, on the thirteenth day of March, and the same day of May, September and November; for the county of Calhoun, on the twentieth day of March, and the same day of May, September and November; for the county of Clay, on the twenty-seventh day of March, and the same day of May, September and November; for the county of Wirt, on the fourth day of April, and the same day of June, October, and December; and for the county of Wood, on the fifteenth day of April, and the same day of June, October and December.

Wirt.

Wood.

VII. In the Seventh Circuit—for the county of Mason, on the first day of March, and the same day of May, September and November; for the county of Putnam, on the fifteenth day of March, and the same day of May, September and November; for the county of Fayette, on the twenty-fifth day of March, and the same day of May, September and November; and for the county of Kanawha, on the second day of April, and the same day of June, October and December.

Seventh circuit. Mason.

Putnam.

Fayette.

Kanawha.

VIII. In the Eighth Circuit—for the county of Wayne, on the first day of March, and the same day of May, September and November; For the county of Cabell, on the twelfth day of March, and the same day of May, September and November; for the county of Boone, on the twenty-seventh day of March, and the same day of May, September and November; for the county of Raleigh, on the seventh day of April, and the same day of June, October and December; for the county of Wyoming, on the seventeenth day of April, and the same day of June, October and December; and for the county of Logan, on the twenty-sixth day of April, and the same day of June, October and December.

Eighth circuit. Wayne.

Cabell.

Boone.

Raleigh.

Wyoming.

Logan.

IX. In the Ninth Circuit—for the county of Pocahontas, on the first day of March, and the same day of May, September and November; for the county of Greenbrier, on the eighth day of March, and the same day of May, September and November; for the county of Monroe, on the nineteenth day of March, and the same day of May, September and November; for the county of Mercer, on the twenty-ninth day of March, and the same day of May, September and November; and for the county of McDowell, on the sixth day of April, and the same day of June, October and December.

Ninth circuit. Pocahontas.

Greenbrier.

Monroe.

Mercer.

McDowell.

X. In the Tenth Circuit—for the county of Pendleton, on the first day of March, and the same day of May, September and November; for the county of Hardy, on the eleventh day of March, and the same day of May, September and November; for the county of Hampshire, on the twenty-seventh day of March, and the same day of May, September and November; and for the county of Morgan, on the twentieth day of April, and the same day of June, October and December.

Tenth circuit. Pendleton.

Hardy.

Hampshire.

Morgan.

4. Section thirty-four of chapter one hundred and fifty-eight of the said code of Virginia, is hereby repealed.

Law repealed.

5. This act shall be in force from its passage.

CHAP. 9.—An ACT concerning the Hempfield Railroad Company.

Passed July 10, 1863.

Whereas, By an act passed by the Legislature of Pennsylvania, approved on the eighteenth day of April, eighteen hundred and sixty-one, it is enacted as follows:

Pennsylvania act recited.

§1. That whenever any railroad, canal, turnpike, bridge or plank road, of any corporation created by or under any law of this state, shall be sold and conveyed under and by virtue of any process or decree of any court of this state, or by the circuit court of the United States, the person or persons for or on whose account such railroad, canal, turnpike or plank road may be purchased, shall be and they are hereby constituted a body politic and corporate, and shall be vested with all the right, title, interest, property, possession, claim and demand, in law and equity, of, in, and to such railroad, canal, turnpike, bridge or plank road, with its appurtenances, and with all the rights, powers, immunities, privileges and franchises of the corporation, as whose the same may have been so sold, and which may have been granted to, or conferred thereupon, by any act or acts of assembly whatsoever in force at the time of such sale and conveyance, and subject to all the restrictions imposed upon such corporation by any such act or acts, except so far as the same are modified hereby; and the persons for or on whose account any such railroad, canal, turnpike, bridge or plank road, may have been purchased, shall meet within thirty days after the conveyance thereof shall be delivered, public notice of the time and place of such meeting having been given at least once a week for two weeks, in at least one newspaper published in the city or county in which such sale may have been held, and organize said new corporation by electing a president and board of six directors, (to continue in office until the first Monday of May succeeding such meeting, when, and annually thereafter, on the said day, a like election for a president and six directors shall be held, to serve for one year,) and shall adopt a corporate name and common seal, determine the amount of the capital stock thereof, and shall have power to make and issue certificates therefor to the purchaser or purchasers aforesaid, to the amount of their respective interests therein, in shares of fifty dollars each; and may then, or at any time thereafter, create and issue preferred stock to such an amount and on such terms as they may deem necessary, and from time to time to issue bonds, at a rate of interest not exceeding seven per cent to any amount not exceeding their capital stock, and to secure the same by one or more mortgages upon the real and personal property and corporate rights and franchises, or either, or any part or parts thereof.

Pennsylvania act continued.

§2. That it shall be the duty of such new corporation, within one calendar month after its organization, to make a certificate thereof, under its common seal, attested by the signature of its president, specifying the date of such organization, the name so adopted, the amount of capital stock, and the names of its president and directors, and transmit the said certificate to the secretary of state at Harrisburg, to be filed in his office and there remain of record; and a certified copy of such certificate so filed shall be evidence of the corporate existence of said new corporation.

Be it therefore enacted by the Legislature of West Virginia:

1. The purchasers of that part of the property now held by the Hempfield Railroad Company within this state, under a decree of any court of this state, or of the district court of the United States, when they shall have purchased that part of said railroad within the state of Pennsylvania, and shall have been organized and incorporated under the above recited act of the legislature of said state, shall have and possess in this state all the rights, powers, immunities and franchises conferred by said act, for which purpose alone the same is hereby adopted and enacted into a law of this state.

The purchasers of the Hempfield railroad, in this state, be a body corporate when they buy the remainder of the road, &c.

2. It shall be the duty of the corporation, organized under the law of Pennsylvania aforesaid, to file in the office of the secretary of the state of West Virginia, a certified copy of the certificate required by the second section of said act, to be filed in the office of the secretary of the commonwealth of Pennsylvania, which shall also set forth the date of the filing of said certificate, and shall be authenticated by the attestation of said secretary, and the seal of his department; and thereafter the said corporation shall be recognized and taken to be a body politic or corporation in this state; and shall then possess, enjoy and exercise all the rights, powers, immunities and franchises conferred by this act, and by the laws of the state of Virginia relating to the Hempfield Railroad Company, and be subject to all the restrictions imposed by the same; and a certified copy of the certificate filed in the office of the secretary of the state of West Virginia, shall be evidence of the existence of said corporation in this state.

Copy of Pennsylvania certificate to be filed with the secretary of this state.

3. This act shall be in force from its passage.

Chap. 10.—An ACT to regulate Criminal Proceedings against Negroes.

Passed July 15, 1863.

Be it enacted by the Legislature of West Virginia:

1. A negro charged with any offense shall be prosecuted and tried in the same manner, and, if convicted, be subject to the same punishment as a white person; but a negro shall be a competent witness for or against a negro in any criminal proceeding.

Negroes to be tried and punished like white men.
Competency of negro as witness.

2. Chapter two hundred and twelve of the code of Virginia, and the several statutory provisions incorporated therein, are hereby repealed.

Chap. 212 of code of Virginia repealed.

3. This act shall be in force from its passage.

Chap. 11.—An ACT to prescribe the manner in which money may be paid into the Treasury of the State.

Passed July 16, 1863.

Be it enacted by the Legislature of West Virginia:

1. All money to be paid into the treasury of this state, shall be paid into the Merchants' and Mechanics' Bank of Wheeling, at the

How money is to be paid into treasury.

Depositories of state funds.

City of Wheeling, or one of its branches at Point Pleasant, Clarksburg or Morgantown; or into the Northwestern Bank of Virginia, at Wheeling, or one of its branches at Parkersburg or Wellsburg; or into the Exchange Bank of Virginia, at Weston; or into the Fairmont Bank, at Fairmont—to the credit of "the treasury of West Virginia;" and the person so paying the same shall take from the proper officer of such bank or branch a certificate of the fact. The treasurer, on the delivery to him of such certificate, shall retain and file the same, charging the amount therein specified to the proper bank or branch, and delivering to the person who made the payment at bank, duplicate receipts for the amount so paid, specifying on what account the same was paid. The person making the payment shall forthwith hand over one of the said receipts to the auditor, who shall retain and file the same, charging the amount to the treasurer's account, and endorse on the other receipt, which is to be retained by the person making the payment, as follows: "A duplicate hereof has been filed in the auditor's office," and affix his signature and the proper date to such endorsement. And no receipt of the treasurer shall be an acquittance or discharge to any person for any sum of money due this State, unless endorsed by the auditor as aforesaid; and any person liable to pay money into the treasury, who shall pay the same otherwise than according to this act, shall remain liable for such money, and be subject to the same fine, penalty, forfeiture or damages to which he would have been subject if he had not paid the same.

Certificate to be taken by the person paying, from the depository.

And delivered to the treasurer. Treasurer's duplicate receipts.

One of the treasurer's receipts to be delivered to the auditor.

No payment valid unless made according to this act.

Right of governor to change depositories.

2. If the governor, at any time when the legislature is not in session, be of opinion that the safety of the public funds requires that no more money should be paid to the credit of the treasury into any one or more of the depositories specified in this act, he shall announce the fact by proclamation, to be published in some newspaper printed at the seat of government; and after such proclamation is published, it shall not be lawful to pay any sum of money on state account, into any depository or depositories to which such payment shall be thereby forbidden. And if the governor, at any time when the legislature is not in session, be of opinion that the safety of the public funds requires it, he shall by his order in writing, direct the auditor and treasurer to transfer the money held by any depository or depositories on account of the treasury, to any other safe and proper depository or depositories to be designated in such order; and the auditor and treasurer shall thereupon transfer the same as directed. But all such proclamations and orders shall, as soon as possible thereafter, be submitted to the legislature.

Or direct the public funds to be transferred.

Repealing clause.

3. The eighth, ninth, and tenth sections of the ordinance passed June twenty-first, eighteen hundred and sixty-one, entitled "An ordinance relating to the receipts and disbursements of the public revenue, and providing for the appointment of an auditor, treasurer and secretary of the commonwealth," and the act of the general assembly of Virginia, passed May thirteenth, eighteen hundred and sixty-two, to amend the eighth section of the said ordinance, are hereby repealed.

4. This act shall be in force from its passage.

CHAP. 12.—An ACT to regulate the recovery of Claims where the State is a party interested.

Passed July 16, 1863.

Be it enacted by the Legislature of West Virginia:

1. The forty-second, forty-third and forty-sixth chapters of the code of Virginia, second edition, shall be amended by striking out the words "circuit court of the city of Richmond," "commonwealth," and "Virginia," wherever they occur, and inserting in place thereof the words "circuit court for the county in which the seat of government may be located," "state," and "West Virginia," respectively.

Chapters 42, 43 and 46 of code of Virginia amended.

2. The forty-third chapter shall be further amended by striking out the words "in the county or corporation court, or," and the words "or corporation," wherever they occur in the second section thereof, and by inserting the word "assessor" in place of "commissioner of the revenue," twice in the fifth section; and the words "the clerk of the circuit court for his county," in place of "the clerk of his county or corporation court," in the sixth section; and the words "the circuit court for his county" in place of "the court of his county or corporation," in the ninth section; and the words "the prosecuting attorney" in place of "the attorney for the commonwealth," in the thirteenth section.

Chapter 43 further amended.
Chap. 43, sec. 2.
Chap. 43, sec. 5.
Chap. 43, sec. 6.
Chap. 43, sec. 9.
Chap. 43, sec. 13.

3. The twenty-second section of the forty-third chapter shall be amended to read as follows: "22. If any sheriff or other officer shall pay any amount so charged him, and it shall afterwards appear, by the return on the execution therefor, that nothing was received thereon, the auditor shall thereupon issue a warrant on the treasury to refund the amount so paid."

Chap. 43, sec. 22.

4. The said forty-second, forty-third and forty-sixth chapters shall be and continue in force, amended as aforesaid, as laws of this state.

Chapters 42, 43 and 46, as amended, to continue in force as laws of this state.

5. This act shall be in force from its passage.

CHAP. 13.—An ACT to prevent the encouragement of Invasions and Insurrections.

Passed July 16, 1863.

Be it enacted by the Legislature of West Virginia:

1. Every person who shall attempt to justify and uphold an armed invasion of this state, or an organized insurrection therein, by publicly speaking, writing or printing, or by publishing or circulating such writing or printing, during the continuance of such invasion or insurrection, shall be deemed guilty of a misdemeanor, and being thereof convicted, shall be confined in jail not exceeding twelve months and fined not exceeding one thousand dollars.

Upholding an invasion or insurrection by publicly speaking, writing or printing, during its continuance, or by circulating, &c.
To be punished as a misdemeanor.

2. This act shall be specially given in charge to the grand jurors at every regular term of the circuit courts.

This act to be given in charge to grand juries.

2. This act shall be in force from its passage.

CHAP. 14.—An ACT to provide for the appointment and qualification of Deputy Sheriffs, Recorders and Clerks.

Passed July 16, 1863.

Be it enacted by the Legislature of West Virginia:

Sheriffs, &c., may appoint deputies with written consent of judge.

Powers of deputy.

1. A sheriff, recorder, or clerk of any court may, with the consent in writing, of the circuit court for the county, or the judge thereof in vacation, appoint any person as his deputy; and such deputy, during his continuance in office, may discharge any of the official duties of his principal.

Removal of deputy.

2. Such deputy may be removed from office by his principal, or by the circuit court of the county.

Deputy may act after the death of the principal.

Breach of bond after death of principal.

Executor or administrator of principal may remove deputy.

3. If a sheriff, recorder, or the clerk of any court, die during his term of office, his deputies in office at the time of his death, may continue to discharge the duties of the office, in the name of the deceased, until the qualification of his successor; and any default or misfeasance in office of such deputy shall be deemed a breach of the condition of the official bond of the principal, notwithstanding his death; but the personal representative of the deceased principal shall have the same right to remove any deputy from office, and to appoint another, that the principal would have had if alive.

Certain appointment of deputies confirmed.

4. Any appointment of deputy sheriff, recorder, or clerk made since the nineteenth day of June, eighteen hundred and sixty-three, with the consent in writing of the judge of the circuit court for the county, shall have the same force and effect as if made in pursuance of this act.

5. This act shall be in force from its passage.

CHAP. 15.—An ACT to provide Seals for the several Courts and Recorders.

Passed July 17, 1863.

Be it enacted by the Legislature of West Virginia:

The governor to provide seals for the courts and recorders.

1. For every court or recorder without one, the governor shall provide a seal, to be deposited with the clerk of the said court, or with the said recorder, respectively.

2. This act shall be in force from its passage.

CHAP. 16.—An ACT to authorize the Payment of Outstanding Claims for the Tuition of Indigent Children.

Passed July 20, 1863.

Be it enacted by the Legislature of West Virginia:

Claims for tuition prior to Sep, 30, 1862.

1. The superintendents of schools for the several counties of the state are hereby authorized and directed to pay, out of any money in any way accruing or belonging to the literary fund prior to the twentieth day of June, one thousand eight hundred and sixty-three, and

which has heretofore, or may hereafter, come into their hands, all outstanding claims for the tuition of indigent children, where such services were rendered previous to the thirtieth day of September, one thousand eight hundred and sixty-two, and where the accounts for such services have been properly made out and lawfully certified and orders given for the amount thereof, by the school commissioner who authorized the services to be performed, upon the superintendent of schools for the county where such services were rendered. But nothing in this act shall be so construed as to authorize the payment of any claim for such services rendered prior to the thirtieth day of September, in the year one thousand eight hundred and sixty, in any school district where the commissioner thereof had previously exhausted his quota for the current year.

Claims prior to Sep. 30, 1860, not included.

2. This act shall be in force from its passage.

CHAP. 17.—An ACT defining the Jurisdiction and Powers of the Supreme Court of Appeals and the Judges thereof.

Passed July 20, 1863.

Be it enacted by the Legislature of West Virginia:

1. In addition to the jurisdiction conferred on the supreme court of appeals by the constitution, the said court, and the judges thereof respectively, shall succeed to and have all the jurisdiction and powers, original and appellate, which, under the laws in force on the nineteenth day of June, eighteen hundred and sixty-three, could have been exercised by the supreme court of appeals or the district courts of Virginia, or the judges thereof respectively, respecting any suit or proceeding within the limits of this state.

Jurisdiction of court of appeals and the judges thereof to be the same as that of former court.

2. The supreme court of appeals of this state shall hear and determine all cases legally docketed therein or transferred thereto. And it shall be the duty of the clerk of the said court, if in his power to do so, to procure without delay the record of every cause which, on the nineteenth day of June, eighteen hundred and sixty-three, was pending in the supreme court of appeals of Virginia and the district courts thereof, if the supreme court of appeals of this state have jurisdiction of such cause; and to docket the same in his said court, before the commencement of the first term thereof which shall be held in the year eighteen hundred and sixty-four.

To hear all causes legally docketed.
The clerk to procure records.
In what cases.

And docket the same before the first term in the year 1864.

3. The appellant in every such cause shall procure and deliver to the said clerk a proper record of the said cause before the close of the first term of the supreme court of appeals of this state, to be held in the year eighteen hundred and sixty-five, and cause the same to be docketed. And upon failure of the appellant to deliver the said record and have the same docketed as aforesaid, the cause shall stand dismissed at the close of the last mentioned term, and the original judgment or decree of the court below remain in full force. But the supreme court of appeals of this state, for good cause, may, at any time before a cause is dismissed as aforesaid, grant further time for

The appellant to furnish the record before the end of the first term in 1865.

Or cause to be dismissed.

The court may grant further time for producing the record.

producing the record and having the same docketed, but such extension shall not be granted more than once; and if the record be not delivered and the same docketed within the time so allowed, the cause shall stand dismissed as aforesaid.

Costs of procuring record.

4. The reasonable costs of procuring and docketing the said record shall be taxed, under direction of the court, to such party in the cause as the court shall deem right.

Clerks of former courts to deliver records, &c., to clerk of court of appeals.

5. It shall be the duty of the several persons who have heretofore acted as clerks of the above mentioned courts which have ceased to exist within this state, to deliver to the clerk of the supreme court of appeals of this state the records, books, papers, seals and other property of the said courts.

Where the time for appeals, &c., expired between April 17, 1861, and the end of first term in 1864.

Further time may be granted on petition, before end of first term in 1865.

6. In all cases where the time limited for appeal from, or writ of error or supersedeas to, any judgment, decree or order of any circuit court, has expired since the seventeenth day of April, eighteen hundred and sixty-one, or shall hereafter expire before the close of the first term of the supreme court of appeals of this state to be held in the year eighteen hundred and sixty-four, any party who would otherwise have been entitled thereto, may, at any time before the close of the first term of the said court to be held in the year eighteen hundred and sixty-five, present his petition for such appeal, writ of error or supersedeas, notwithstanding anything to the contrary contained in the third section of chapter one hundred and eighty-two of the code of Virginia, second edition, or in any other law or statute of the state of Virginia.

Court may appoint tipstaff. His compensation. May appoint and remove a reporter, and direct how the reports shall be prepared

Compensation of reporter.

7. The supreme court of appeals of this state may appoint a tipstaff and crier, who shall receive out of the treasury such reasonable compensation as the court may allow, and be removable at pleasure. The court shall also appoint, and may remove at pleasure, a reporter, and make such order, from time to time, respecting the preparation, publication and distribution of his reports as may seem to them proper. The reporter shall receive such sum, not exceeding six hundred dollars annually, as the court may determine.

Repealing clause.

8. Chapters one hundred and fifty-nine, one hundred and sixty, and one hundred and sixty-six, the sixth section of chapter fourteen, the third and fourth sections of chapter nineteen, of the said code, and so much of the tenth section of the last mentioned chapter as relates to the reports of decisions, are hereby repealed.

4. This act shall be in force from its passage.

CHAP. 18.—An ACT for the relief of Milton Wells.

Passed July 21, 1863.

Be it enacted by the Legislature of West Virginia:

Clerk of Brooke circuit court allowed time to qualify and give bond.

1. Milton Wells, elected clerk of the circuit court for Brooke county, is hereby allowed one hundred and twenty days after his election, in which to qualify and give the bond of his office.

2. This act shall be in force from its passage.

Chap. 19.—An ACT regulating proceedings in Criminal Cases.

Passed July 22, 1863.

Be it enacted by the Legislature of West Virginia :

Who may issue process to apprehend the accused.

1. A judge of a circuit court in vacation, as well as in term time, or a justice, may issue process for the apprehension of a person charged with an offense.

The examination before such process is issued.

What the warrant shall contain.

2. On complaint to any such officer, of a criminal offense, he shall examine on oath, the complainant and any other witnesses, and if he see good reason to believe that an offense has been committed, shall issue his warrant reciting the accusation and requiring the person accused to be arrested and brought before a justice of the county ; and in the same warrant may require the officer to whom it is directed to summon such witnesses as shall be therein named, to appear and give evidence on the examination.

Proceedings where the accused is out of the county in which the offense was committed.

Endorsement by justice of warrant issued in another county.

3. If a person charged with an offense shall, after or at the time the warrant is issued for his apprehension, escape from or be out of the county in which the offense is alleged to have been committed, the officer to whom the warrant is directed may pursue and apprehend him anywhere in the state ; or a justice of a county other than that in which it was issued, on being satisfied of the genuineness thereof, shall endorse thereon his name and official character, and such endorsement shall operate as a direction of the warrant to an officer of such justice's county.

Before whom the person arrested is to be taken.

4. An officer arresting a person under a warrant for an offense, shall bring such person before, and return such warrant to, a justice of the county in which the warrant issued, unless such person be let to bail as hereinafter mentioned, or it be otherwise provided.

Proceedings where the person taken before a justice is to be tried in another county.

5. Where the warrant is issued in a county other than that in which the charge ought to be tried, the justice before whom the accused is brought, shall by warrant, commit him to an officer, that he may, and such officer shall, carry him to the county in which the trial should be, and there shall take him before, and return such warrant to, a justice thereof.

In what cases a justice may bail the accused.

In what cases he may not.

Amount of bail where accused has been committed.

Power of circuit court, or judge to bail.

6. A justice may let to bail a person who is charged with, but not convicted of, an offense not punishable with death or confinement in the penitentiary, or of which, if it be so punishable, only a light suspicion of guilt falls on him. If the offense be so punishable, and there is good cause to believe such person guilty, he shall not be let to bail by a justice or justices ; and in no case shall a person in jail under an order of commitment, be admitted to bail by a justice in a less sum than was required by such order. But a circuit court, or any judge thereof, may, for good cause, admit any person to bail before conviction.

Person arrested in one county, but to be tried in another.

Bail in cases of misdemeanor

7. A person charged with an offense not so punishable, and to be carried to another county, shall, if he request it in the county wherein he is arrested, be brought before a justice thereof. In such or any case of a person charged with an offense not so punishable, if he de-

Recognizance in said case. sire it, a court, judge or justice, before whom he is brought, may, without trial or examination, let him to bail upon taking a recognizance for his appearance before the court having cognizance of the case; To be certified on the warrant. the fact of taking which shall be certified by the court or officer taking it, upon the warrant under which such person was arrested; Warrant and recognizance, to whom returned. and the warrant and recognizance shall be returned forthwith to the clerk of the court before which the accused is to appear; Witnesses to be recognized or summoned. to which court the judge or justice who issued such warrant shall recognize, or cause to be summoned, such witnesses as he may think proper.

Bail piece. 8. In all cases in which recognizances at the suit of the commonwealth of Virginia or of this state have heretofore been or shall be entered into, it shall be the duty of the clerk of the court in which, or in the clerk's office of which, any recognizance may be filed, to deliver to the bail on his applying therefor, a bail piece in substance as follows, viz: "*A B of the county of ———— is delivered to bail unto C D, of the county of ————, at the suit of the state of West Virginia. Given under my hand this — day of —— in the year ——.*"

The justice may adjourn the examination. 9. A justice may adjourn an examination or trial pending before him, not exceeding ten days at one time, without the consent of the accused, and to any place in the county. In what case the accused to be committed, if the examination be adjourned. In such case, if the accused be charged with an offense punishable with death or confinement in the penitentiary, he shall be committed to jail, Or recognized to appear. otherwise he may be recognized for his appearance at the time appointed for such further examination or trial, or for want of bail be committed to jail.

Proceedings if the person bailed do not appear. 10. If the person so recognized do not appear at the time so appointed, the said justice shall certify the recognizance and the fact of such default to the circuit court at its next term; and like proceedings shall be had thereon as on breach of a recognizance for appearance before such court.

Order of commitment for further examination. 11. If the accused is committed, it shall be by an order of the justice stating that he is committed for further examination on a day specified in the order; How accused brought before the justice. and on that day he may be brought before the justice by his verbal order to the officer by whom he was committed, or by a written order to a different person.

Witnesses to be examined in presence of the accused. 12. The justice before whom any person is brought for an offense, shall, as soon as may be, in the presence of such person, examine on oath the witnesses for and against him, The accused allowed counsel. and he may be assisted by counsel.

Witnesses may be examined apart from each other. 13. While a witness is under such examination, all other witnesses may, by order of the justice, be excluded from the place of the examination and kept separate from each other.

Testimony may be reduced to writing. 14. When the justice deems it proper, or the accused shall desire it, the testimony of the witnesses shall be reduced to writing and signed by them respectively.

When the justice shall discharge the accused. 15. The justice shall discharge the accused if he consider that there is not sufficient cause for charging him with the offense; and he shall

Or commit or bail him.

Witnesses to be recognized.

commit him to jail, if he consider that there is such cause, or let him to bail, under the sixth section. He shall require recognizances, with or without sureties, as he deems proper, from all material witnesses against the accused, and also for him if he desire it.

When the commitment shall be for trial.

The recognizances in such case.

What the justice shall certify to the court.

Clerk to inform the prosecuting attorney of such certificate.

16. When a justice so considers that there is sufficient cause for charging the accused with the offense, unless it be a case wherein it is otherwise specially provided, the commitment shall be for trial, and the recognizances be for appearance in the circuit court on some day of a term then being held, or on the first day of the next term thereof. The justice shall return to the clerk of such court, as soon as may be, a certificate of the nature of the offense, showing whether the accused was committed or bailed therefor; and the clerk, as soon as may be, shall inform the prosecuting attorney, in said court, of such certificate.

Examination and recognizances, when to be certified.

17. Every examination and recognizance taken under this act shall, by the judge or justice taking it, be certified to the clerk of the circuit court, on or before the day on which the party charged is to appear in such court. If he fail, he may be compelled to do so by attachment, as for contempt.

A justice, before whom the accused is brought, may associate other justices with him.

18. A justice to whom complaint is made, or before whom a prisoner is brought, may associate with himself one or more justices of the county, and they may together execute the powers and duties before mentioned.

VENIRE FACIAS in case of felony.

19. When a person charged with a felony, is committed or recognized for trial in a circuit court according to the foregoing sections, the clerk of such court, shall as soon as may be, issue a *venire facias* directed to the officer of the court in which the trial is to be, requiring him to summon jurors for such trial.

Compromise of assault and battery, and misdemeanor.

20. If a person be in jail, or under recognizance to answer a charge of assault and battery or other misdemeanor, for which there is a remedy by civil action, unless the offense was committed by or upon a sheriff or other officer of justice, or riotously, or with intent to commit a felony, if the party injured appear before the judge or justice who made the commitment or took the recognizance, and acknowledge in writing that he has received satisfaction for the injury, such judge or justice, in his discretion, may by an order under his hand, supersede the commitment or discharge the recognizances as to the accused and the witnesses, upon payment by the accused of the costs which may have already accrued.

Order discharging recognizance

Order superseding a commitment.

Discharge in such case of the accused and the witnesses.

21. Every order discharging a recognizance shall be filed with the clerk before the day of the court on which the party was to appear; and an order superseding a commitment shall be delivered to the jailor, who shall forthwith discharge the witnesses (if any) and the accused; and against him judgment shall be entered in the said court, for the costs of the prosecution which have not already been paid.

Trial of persons heretofore committed, &c.

22. Any person committed or recognized for examination before an examining court, as provided for in chapter two hundred and five of the code of Virginia, or committed or recognized for trial before a

court of oyer and terminer, as provided for in section second of chapter two hundred and twelve of the said code, shall appear for trial before the circuit court of the county in which such examining court, or court of oyer and terminer, was to be held, on the first day of the next term thereof, in the same manner as if committed or recognized for that purpose under the foregoing sections. And all witnesses recognized to appear before such examining conrt, or court of oyer and terminer, shall appear before such circuit court on the first day of the next term thereof.

Chap. 204 and 205 of code repealed.

23. Chapters two hundred and four and two hundred and five of the code of Virginia are hereby repealed.

24. This act shall be in force from its passage.

CHAP. 20.—An ACT allowing further time to Officers now elected, in which to Qualify and give Bond.

Passed July 22, 1863.

Be it enacted by the Legislature of West Virginia:

Time allowed officers heretofore elected to qualify and give bond.

1. Any person who is now elected to any office in any county in this state, who is required by law to qualify and give bond, shall be allowed until the end of the first term of the circuit court for the county in which he is elected, in which to qualify and give the bond of his office, if it be made appear to said court, or the judge thereof in vacation, that such officer has been prevented, by any cause, from qualifying and giving said bond within the time fixed by an act entitled "An act relating to official bonds," passed June twenty-ninth, eighteen hundred and sixty-three.

2. This act shall be in force from its passage.

CHAP. 21.—An ACT for the appointment of a Quartermaster General, and prescribing, in part, his duties.

Passed July 23, 1863.

Be it enacted by the Legislature of West Virginia:

Quartermaster general to be appointed by the governor. His rank. Term of office.

1. There shall be a quartermaster general, who shall be appointed by the governor, with the rank of a colonel of infantry, by brevet. His term of office shall be two years unless the office be sooner abolished; but the term of the first quartermaster general appointed shall expire on the first of January, eighteen hundred and sixty-five.

H's duties and powers.

2. He shall have charge of the quartermaster's department throughout the state, and issue orders to all quartermasters, requiring returns and reports, and give instructions for the preservation of the public property. He shall be commissary general of ordnance, and as such shall direct the inspection and proving of all ordnance and ammunition, and the preparation thereof for service.

His duties and powers continued.

3. All public arms, ammunition, accoutrements, camp equipage, and military stores, belonging to the state, shall be subject to the control of the quartermaster general, in accordance with the order of the governor; and it shall be the duty of said quartermaster general to see that all arms and munitions of war now belonging to the state, or which may hereafter in any manner be acquired, are properly cared for and kept in good order for use. All accounts accruing against the state under the provisions of this act shall be paid on the certificate of the quartermaster general, countersigned by the governor.

Accounts under this act, how certified.

Authority of the governor.

4. All the duties attached to this office shall be performed under the regulations of the executive, and the laws of West Virginia; and said quartermaster general shall receive for his services the sum of one thousand dollars per annum, payable quarterly as other salaries are paid. He shall keep his office at the seat of government; but the governor may, when the public service may render it expedient, direct him to remove with his office to any other place within the state.

Compensation of quartermaster general.

Where his office shall be kept.

His reports to the governor.

5. He shall report to the governor once a year, and at all other times when required.

His bond.

6. Before entering upon the duties of his office, said officer shall execute a bond to be approved by the governor, in the penalty of ten thousand dollars, with sufficient sureties; and said bond shall be filed in the office of the secretary of the state.

Repealing clause.

7. The provisions of section twenty-sixth, chapter twenty-third, of the code of Virginia, second edition, inconsistent with this act, are hereby repealed.

3. This act shall be in force from its passage.

CHAP. 22.—An ACT to amend the act Staying the Collection of Certain Debts.

Passed July 27, 1863.

Be it enacted by the Legislature of West Virginia:

A judge may order a deed of trust or decree to be executed against any person in rebellion.

1. If it shall appear to the judge of any circuit by satisfactory proof, either in term time or vacation, that any person who has executed a deed of trust on estate, real or personal, or against whom a decree has been or may be rendered for the sale of real estate within the said circuit, is engaged in levying war against the United States, or in giving aid and support to the rebellion, it shall be lawful for the said judge, at the request of any party interested, to issue an order under his hand, directed to the trustee or commissioner, requiring him to advertise and sell the said estate pursuant to the deed of trust or decree.

Sale of real estate of infants.

2. Where any decree has been heretofore or may be hereafter rendered, for the sale of real estate belonging to infants, the judge for the circuit in which said real estate may lie, either in term time or vacation, may, if he deem it for the interest of the infants, and their guardian, (if there be any) consent thereto, direct such sale to be made pursuant to said decree.

Sale of property which has greatly diminished in value.

3. Where a lien exists by virtue of any decree heretofore rendered or that may hereafter be rendered, or by virtue of a deed of trust executed before the twenty-sixth day of July, eighteen hundred and sixty-one, on property either real or personal, or where such property in the hands of a receiver, is from any cause greatly diminishing in value, upon satisfactory proof thereof, before a judge, either in term time or vacation, of the circuit in which such property may lie, he shall direct the sale thereof pursuant to said decree or deed of trust; and in case of property in the hands of a receiver, issue an order directing such sale, upon such terms as to him shall seem just, to be made either by such receiver or a special commissioner appointed for that purpose.

Duty of trustee, &c., to comply with order.

4. It shall be the duty of such trustee, commissioner or receiver to comply with any such order made as aforesaid, notwithstanding any thing to the contrary contained in the act of the general assembly of Virginia, passed January thirtieth, eighteen hundred and sixty-three, entitled "an act staying the collection of certain debts." And when any such trustee, commissioner, or receiver is so situated, from any cause, that he cannot comply with such order, it shall be the duty of such judge to appoint one in his place for the purpose, whose duty it shall be to execute such order.

Authority of the judge to change the trustee.

Orders under this act to be recorded.

5. It shall be the duty of the judge who may make any order in vacation, under the provisions of this act, to cause such order to be forthwith entered on the order book of the circuit court of the proper county; and if the order relate to any decree, to cause a copy of such order to be filed among the papers of the cause.

6. This act shall be in force from its passage.

CHAP. 23.—An ACT relating to Exemptions from Military Duty.

Passed July 28, 1863.

Be it enacted by the Legislature of West Virginia:

Who are exempt from military duty.

1. The following persons shall be exempt from the performance of all military duties whatever, to-wit: The vice president of the United States, the officers, judicial and executive of the government of the United States, the members of both houses of congress and their respective officers, the members of both branches of the legislature of the state and their respective officers, during the sessions of the legislature, and for ten days previous thereto, all custom house officers, all assessors, assistant assessors and collectors of the internal revenue of the United States, all post masters and post officers necessarily employed in any post office, all mail contractors, all inspectors of exports, the secretary of the state, the judges of the supreme court of appeals and circuit courts, the clerks of the said courts, recorders, sheriffs and sergeants of corporations, the attorney general, the treasurer, auditor, all loyal ministers of the gospel licensed to preach according to the rules of their sect, and having charge of, or being reg-

ularly employed by, any charge, congregation or circuit. Also, first, the only son of a widow dependent on his labor for support; second, the only son of aged or infirm parent or parents dependent on his labor for support; third, where there are two or more sons of aged or infirm parents subject to draft, the father, or if he be dead, the mother, may elect which son shall be exempt; fourth, the only brother of children not twelve years old, dependent upon his labor for support, if such children have neither father nor mother living; fifth, the father of a motherless child or children dependent upon his labor for support; sixth, where there are a father and sons in the same family and household, and two or more of them are in the military service of the United States or of this state, the residue of such family and household shall be exempt. The enrolling board shall in all cases decide the number of persons necessarily engaged in any post office.

Who exempt from ordinary military duty.

2. The following persons shall be exempt from the performance of the ordinary duties of militiamen, but shall be liable to be drafted, and on the order of the governor, to be detailed for drill and active service in time of public danger or invasion, to-wit: all millers necessarily and personally employed in any grist mill, all ferrymen in like manner employed at any ferry established by law, the general agent and store-keeper of the penitentiary and his clerks, the officers and members of all fire companies who are exempt by the provisions of the fourth section of chapter fifty-five of the code of Virginia, second edition, the police in cities and towns, all school commissioners, trustees of district free schools, and, during the sitting of the supreme court of appeals, the tipstaff and crier thereof, also every officer of the militia who may resign his commission after serving seven years successively, and every non-commissioned officer or member of a uniformed and armed volunteer company, who shall have served in one or more such companies for three successive years.

Chap. 22, Sec. 2 and 3 of Code repealed.

3. The second and third sections of chapter twenty-second of the code of Virginia, second edition, are hereby repealed.

4. This act shall be in force from its passage.

CHAP. 24.—An ACT to provide for the trial of Offenses committed in counties in which the administration of justice may be interrupted by war or insurrection.

Passed July 28, 1863.

Be it enacted by the legislature of West Virginia:

In what case an offense may be tried out of the county where it was committed.

1. When any county, or part of it, is in possession of armed rebels or a public enemy, or is threatened with invasion, or war or insurrection exists therein, so as to make it probable that the jurisdiction of the circuit court could not safely and without interruption be exercised therein, offenses committed in such county against the criminal laws of the state may be prosecuted, tried and punished in another county, as hereinafter provided, and no question of jurisdiction as to the place of trial shall be sustained by the court. But the venue may be changed as in other cases.

The venue may be changed.

Circuit judge may appoint the place of trial.

Examination of accused out of the county.

His committal or discharge.

Witnesses recognized or summoned.

Recognizances — how returned.

Persons held for trial may be tried and punished in the county so appointed.

2. It shall be the duty of the judge of the circuit to which such county belongs, by warrant to be directed to and executed by any sheriff in the state, to cause persons charged with felonies or misdemeanors committed in the said county, to be arrested and brought before him at such convenient place in any other county as he may appoint for the purpose; and there, as the evidence may require, to commit or recognize them for trial in the circuit court of the last mentioned county, or discharge them; and if he so commit or recognize any person for trial, to recognize or cause to be summoned such witnesses as he may think proper. The said warrant and recognizances shall be returned forthwith to the clerk of the court before which the accused is to appear. The persons so committed or recognized for trial, may be indicted, tried, convicted and punished as if the offenses had been committed in the county appointed for their trial as aforesaid.

The accused, if previously committed, may be taken to another county for trial. In what case.

Removal of the indictment and papers in the case.

New indictment may be found if the papers in the case be destroyed.

3. And if a person charged with a felony or misdemeanor has been committed to the jail of any county in which, for the causes mentioned in the first section of this act, it is probable that the jurisdiction of the circuit court could not be safely and without interruption exercised, it shall be the duty of the judge for the circuit to which such county belongs, by warrant to be directed and executed as aforesaid, to cause the person so committed, with the papers in his case, including the indictment, if any shall have been found against him, to be removed to any other county in this state the said judge may for that purpose appoint; and the same proceedings may be had thereupon in the circuit court of the last mentioned county as if the offense had been committed and the indictment had been found therein. If the papers in the case have been destroyed, carried away or concealed so that the same cannot be produced in the circuit court appointed for trial as aforesaid, a new presentment or indictment may be preferred against the accused.

Expenses to be paid by the state.

4. All expense of such trial, and of the apprehending and safe keeping of the criminal, shall be certified to the auditor of the state and paid by the treasurer thereof.

In what case the judge of an adjoining circuit may act.

5. And where a felony or misdemeanor has been committed in any county in which, for the causes aforesaid, it is probable that the jurisdiction of the circuit court could not be safely and without interruption exercised, and there is no judge for the circuit to which such county belongs, or he shall refuse or be unable to act, the authority specified in the preceding sections of this act may be exercised by the judge for any adjoining circuit, with like effect to all intents and purposes.

6. This act shall be in force from its passage.

CHAP. 25.—An ACT making an Appropriation for Expenses of the Legislature.

Passed July 28, 1863.

Be it enacted by the Legislature of West Virginia:

1. Ten thousand dollars are hereby appropriated for expenses of the legislature at its present session.

$10,000 appropriated for expenses of Legislature.

2. This act shall take effect from its passage.

CHAP. 26.—An ACT providing for Examining and Certifying Commissioners' Books for 1863.

Passed July 28, 1863.

Be it enacted by the Legislature of West Virginia:

1. It shall be the duty of the recorders of the several counties of this state, where the books of the commissioners of the revenue were not examined and certified before the twentieth day of June, eighteen hundred and sixty-three, to examine and certify said books for eighteen hundred and sixty-three, and do and discharge all the duties in reference thereto, as is required of the clerks of the county courts; and the said recorders shall be subject to the like penalties and receive the same allowances as is prescribed in chapter thirty-five of the second edition of the code of Virginia for the said clerks.

When commissioners' books to be certified by the recorder.

Recorder's duty, liability and fees same as those of clerk of county court.

2. This act shall be in force from its passage.

CHAP. 27.—An ACT to provide for the division into Townships of the several Counties of the State.

Passed July 31, 1863.

Be it enacted by the Legislature of West Virginia:

1. The persons named in the schedule of this act, being one for each magisterial district in each county of the state, a majority of whom may act, are hereby appointed commissioners to divide their respective counties into townships, in accordance with the provisions of the first section of the seventh article of the constitution; and shall as soon as practicable, first being duly sworn, proceed to make such division. Where a city or incorporated town necessarily constitutes part of two or more townships, and is divided into wards, the boundaries of such townships within such city or town, shall, if practicable, be so located that parts of the same ward are not thrown into different townships.

Commissioners named to divide the counties into townships.

Division of cities and towns into townships.

2. In case of the refusal or inability to act of one or more of the commissioners hereby appointed, the remaining commissioner or commissioners for the same county shall appoint another citizen or citizens thereof to fill the vacancy or vacancies, whose duties and compensation shall be the same as if directly appointed by this act.

Refusal or inability to act of one or more of the commissioners.

3. The commissioners for each county shall employ a competent surveyor, who shall attend them when required, and shall run and

Surveyor to be employed.

Duties of surveyor. Outline maps to be made. What the maps to contain. Names of the townships.

mark such lines as they may designate. He shall make and return to the said commissioners two fair outline maps or plats of his county, on which the external boundaries thereof and the division lines of the townships therein, shall be plainly delineated and each township designated by a name to be chosen by a majority of the acting commissioners, together with two written descriptions of the specific boundaries of each.

Pay of the commissioners. Pay of the surveyor. How audited and paid.

4. For their services under this act, the acting commissioners shall be allowed the sum of one dollar and a half each, and the surveyor two dollars, for every day during which they are respectively engaged in the performance of the duties hereby prescribed, including the time necessarily employed by the surveyor in making the required maps or plats and descriptions. The claims of the commissioners and surveyor shall be audited by the board of supervisors of their county and paid from the county treasury.

Report of the commissioners to the secretary of the state. Duty of the secretary of the state. Report by commissioners to the recorder of the county.

5. The commissioners for each county shall forward a report of their proceedings under this act, including an estimate of the white population of each township according to the United States census of eighteen hundred and sixty, and a statement of the whole cost incurred, together with one of the said maps or plats and descriptions, to the secretary of the state, who shall deposit the same among the archives thereof. They shall also deposit with the recorder of their county, to be by him carefully preserved, a duplicate of their estimate and statement, and also the other map or plat and description.

6. This act shall be in force from its passage.

SCHEDULE.

COMMISSIONERS FOR THE COUNTY OF

Barbour—David Zinn, Henry Martin, Johnson Ward, Jesse Teter, and Enoch Sears.

Boone—Adam Toney, William Workman, Alfred A. Hagar, and Allen Vannatter.

Braxton—Charles S. Hall, James W. Morrison, James J. McCoy, Jacob Shaver, and Elmore Frame.

Brooke—Adam Kuhn, John Atkinson, George Hooker, and Robert M. Wells.

Cabell—Morris Blake, Capt. John Smith, Greenville Harrison, Jeremiah Witcher and Solomon Midkiff.

Calhoun—James Bar, Thomas Jarvis, Morgan Marks, and G. W. Blackshire.

Clay—Samuel E. Hier, Madison Stephenson, Campbell Wood, and James Walker, sr.

Doddridge—Jacob Yeater, George W. Snider, Joseph Summers, and Noah James.

Fayette—William Cassady, John Kinkaid, Joseph Kuhn, and Allen Huddleson.

Gilmer—James Cather, J. W. Stout, and Thomas M. Brannan.

Greenbrier—John M. Copland, Joel McFerson, David Creigh, Thomas Henning, jr., George Henry, Thomas Bell, Matthew Arbuckle, and James Dolan.

Hancock—James W. Brown, Joseph W. Allison, B. J. Smith, and Jonathan Allison.

Hampshire—O. D. Downey, Wright Welton, Carlton S. Jones, James H. Trout, Thomas R. Carskadon, Wm. S. Purget, Frederick Hoffman, Samuel Pancoast, and Peter Arnold (of Joseph.)

Hardy—Samuel Rabb, Aaron Baker, Chas. Scott, Sanford Y. Simmons, A. Dolly, and Ferdinand Lewis.

Harrison—Luther Haymond, S. M. Ogden, Sidney Haymond, John W. Boggess, and Jacob Highland.

Jackson—George L. Kennedy, John Johnson, Robert R. Riley, Abram Slaughter, and George Click.

Kanawha—George Belcher, J. T. Reynolds, John Atkinson, Hiram Holston, Andrew Cunningham, David Shirkey, and John L. Cole.

Lewis—Jesse Woofter, Esais Fetty, John S. Anderson, and Mansfield McWhorter.

Logan—Thomas Buchanan, Samuel Varner, Hiram Mullins, Tolbert Godbey, and Squire Ellis.

Marion—Wm. N. Hall, Samuel Higinbotham, John Meredith, Benjamin Fleming, Aaron Youst, Wm. Fox, and David Cunningham.

Marshall—John Winters, Jeremiah Jones, Wm. McFarland, Sr., Alex. Kemple, G. W. Evans, Wm. Stewart, John Burley, and John Alley.

Mason—J. P. B. R. Smith, Thos. Ball, Benj. Day, Apollo Stephens, and David George.

McDowell—James P. Mitchell, Samuel Lambert, and Jno. Charles.

Mercer—George Evans, Wallace J. Comer, Hiram Sarver, Anderson Belcher, and Geo. W. Crook.

Monongalia—William Price, Reuben Finnell, James T. McClaskey, Thomas Tarleton, Philemon L. Rice, Jesse Mercer, and Jesse J. Fitch.

Monroe—Grandison D. Landcraft, F. F. Neel, Alexander Humphreys, Wm. Scott, Samuel Clark, Geo. Carpenter, and Andrew Prentice.

Morgan—Jacob Cann, Thomas Tritapoo, Christian Courtney, and Daniel Unger.

Nicholas—John R. McCutchen, Geo. A. Stephenson, Thomas Drennen, Anthony McClung, and Alex. Groves.

Ohio—Samuel Irwin, Matthew B. Reed, Joseph Waddle, Samuel McCulloch, T. J. Stewart, John D. Maxwell, George W. Sights, and James Bodley.

Pendleton—E. C. Harper, Michael Mallow, Jr., S. Day, Simeon Harmon, Jonathan Hizer, and Reuben Vance.

Pleasants—James Williamson, R. S. Triplet, and Joseph Hubbs.

Pocahontas—D. M. Burgis, William R. Moore, J. N. Pray, Morgan Anderson, David M. Burgis, John Sharp, Sr., and John N. Pray.

Preston—Harrison Hagans, Solomon Miller, George M. Michael, James H. Shaver, Peter M. Hartley, William H. Grimes, Joseph G. Baker, and William H. Brown.

Putnam—Irwin McCoy, John Bowyer, Joseph Hutton, A. N. Curry and William Hanshaw.

Raleigh—Meredith Wells, James Webb, and A. J. Hull.

Randolph—J. K. Scott, William Bennett, W. M. Phares, Harmon Snider, Jeremiah C. Lanham, and William Piercy.

Ritchie—W. H. Douglass, A. J. Wilson, J. H. Prince, and Jacob Hatfield.

Roane—John Hively, H. D. Chapman, Matthew Geary, and Jas. Riddle.

Taylor—Nelson Gray, John J. Allen, and John Haymond.

Tucker—David Wheeler, Enoch Minear, and Daniel Adams.

Tyler—J. M. Smith, James Covalt, William B. Kern, and David Underwood.

Upshur—James Kesling, C. S. Haynes, O. B. Loudin, and John J. Burr.

Wayne—John Adams, Wm. Bartrum, Jesse Parsley, John Bloss, and George Atkins.

Wetzel—James G. West, Jacob Fluharty, Robert Leep, Sr., Wells Kinney, Matthew Kearney, and Josiah Boyers.

Webster—W. G. Hamrick, William Gregory, and I. H. Griffin.

Wirt—Lewis Woodyard, Charles W. Fisher, Abijah Hawley, and John P. Hall.

Wood—H. P. Dils, A. L. Beckwith, G. S. Henry, John Hannaman, Sr., Henderson Deems.

Wyoming—Mitchell Cook, Henry Ellis, and Charles Stewart.

CHAP. 28.—An ACT concerning the Bond of the Surveyor of Lands.

Passed July 31, 1863.

Be it enacted by the Legislature of West Virginia:

The bond of the surveyor of lands. By whom approved. Penalty. Time allowed for giving bond.

1. Every surveyor of lands shall give bond, to be approved by the circuit court of the county, or the judge thereof in vacation, in such penalty, not less than one thousand nor more than three thousand dollars, as the said court or judge shall deem sufficient. But all surveyors now elected shall be allowed one hundred and twenty days after the passage of this act in which to execute such bond.

2. This act shall be in force from its passage.

CHAP. 29.—An ACT in relation to Orders of Publication.

Passed August 1, 1863.

Be it enacted by the Legislature of West Virginia:

Chapter 170, sec. 11, of the code amended.

1. Section eleven of chapter one hundred and seventy of the code of Virginia shall be amended and re-enacted to read as follows:—

Order of publication, what it shall state. How published.

"11. Every order of publication shall state briefly the object of the suit, and require the defendants against whom it is entered, or the unknown parties, to appear within one month after due publication thereof and do what is necessary to protect their interests. It shall be published once a week for four successive weeks in such newspaper as the court may prescribe, or if none be so prescribed, as the clerk may direct, and shall be posted at the front door of the court house of the county wherein the court is held, on the first Monday after it is entered."

Where and when posted.

2. This act shall be in force from its passage.

CHAP. 30.—An ACT to authorize the Heirs of David Albright to establish a Ferry across Cheat River.

Passed August 3, 1863.

Be it enacted by the Legislature of West Virginia:

1. It shall be lawful for the heirs of David Albright, deceased, their heirs and assigns, to establish and keep a ferry from their lands at or near the town of Albright, in Preston county, across Cheat river to some convenient point on the opposite shore, where a former ferry, known as "Snider's ferry," crossed said river, and immediately below the site of the recent wire suspension bridge, known as the "Cheat River Toll Bridge," until the first meeting of the board of supervisors of the said county. And said board of supervisors shall at their first meeting, or as soon thereafter as may be practicable, (if any other person or persons shall have title to said ferry landings, or either of them,) award such damages as they may deem just to such adverse claimants, for the use and occupancy of said real estate for the period said Albright's heirs may have used the same for said ferry.

Heirs of David Albright allowed to establish a ferry across Cheat river.

Power of supervisors to award damages.

2. The rates for transportation across said river at said ferry shall be as follows, to-wit:

Rates of toll at said ferry.

For every person on foot, five cents.
For every horse and rider, ten cents.
For every wagon and one horse and driver, twenty cents.
For every wagon and two horses and driver, twenty-five cents.
And for each additional horse attached thereto, five cents.
For every buggy-wagon and one horse, twenty cents.
For every buggy or pleasure carriage and two horses, twenty-five cents.
For every score of sheep or hogs, ten cents.
For every head of cattle, one and a half cents.

3. This act shall be in force from its passage.

CHAP. 34.—An ACT relating to the Public Printing.

Passed August 4, 1863.

Be it enacted by the Legislature of West Virginia:

1. All the officers of the state at the seat of government, authorized to have printing done or blanks furnished at the expense of the state, are hereby required to have the same done or furnished by the public printer, unless the same shall have been previously authorized by the governor to be done elsewhere.

State officers required to have printing done by public printer, unless the governor direct otherwise.

Otherwise such printing not to paid for by the state.

2. No money shall be paid out of the public treasury for printing done elsewhere than by the public printer, unless the same shall have been previously authorized by the governor as aforesaid.

Authority of the governor in respect to public printing.

3. For good cause, the governor may authorize the public printing to be done elsewhere than by the public printer, the reasons for which shall be given to the legislature at its next session.

Authority of the clerk of house of delegates.

4. Nothing herein contained shall be construed to affect the provisions contained in the sixteenth section of chapter fifteen of the code of Virginia, second edition.

Chapter 20, sec. 1, 2 and 4 of the code repealed.

5. The first, second and fourth sections of chapter twenty of the code of Virginia, second edition, are hereby repealed.

6. This act shall be in force from its passage.

CHAP. 32.—An ACT conferring on the Governor, Auditor, Treasurer and Secretary of the State, the powers and duties of the Board of Public Works.

Passed August 5, 1863.

Be it enacted by the Legislature of West Virginia:

Functions of the board of public works vested in the executive, &c.

1. The same powers and duties which by the laws of the state of Virginia in force on the nineteenth day of June last were vested in and required of the governor, auditor, and treasurer of that state as a board of public works, are hereby vested in and shall be exercised by the governor, auditor, treasurer, and secretary of this state.

2. This act shall be in force from its passage.

CHAP. 33.—An ACT making Appropriations.

Passed August 5, 1863.

Be it enacted by the Legislature of West Virginia:

Appropriation made.

1. There is hereby appropriated for the purposes herein specified, the following sums, viz:

For expenses incurred by executive committee of constitutional convention.

To the payment of outstanding claims for expenses in carrying into effect the ordinances of the late constitutional convention and the schedule annexed to the original constitution, including expenses of all elections held under and by virtue of the said ordinances and schedule, two thousand and twenty-eight dollars and forty-eight cents.

Civil contingent fund.

On account of the civil contingent fund, five thousand dollars.

Salaries of civil officers.

To salaries of officers of civil government, four thousand dollars.

Expenses of judiciary.

To expenses of the judiciary, including salaries of judges, mileage, &c., five thousand dollars.

Contingent expenses of courts.

To contingent expenses of the courts of the state, two thousand dollars.

Executive clerks.

To pay of clerks in executive offices, two thousand dollars.

Lunatics.

To expenses of lunatics, three thousand dollars.

Convicts.

To expenses of convicts, two thousand dollars.

To salary of adjutant general, six hundred dollars.

Adjutant Gen'l.

To pay of janitor in executive office, one hundred and fifty dollars.

Janitor in capitol

To defray expenses of criminal charges, including witnesses', jurors' and jailors' fees, three thousand dollars.

Expenses for criminal charges

To pay Thomas Hornbrook, James Bodley, and J. Hornbrook, committee for expenses incurred in inaugural celebration, three hundred and one dollars and sixty-four cents.

Expenses of inauguration.

To pay expenses of elections in the county of Harrison, seventy-three dollars.

Election expenses in Harrison county.

To pay of commissioners of the revenue, three thousand dollars.

Commissioners of the revenue.

4. This act shall be in force from its passage.

Chap. 34.—An ACT to authorize Suits in Ritchie county in Cases heretofore cognizable in the Courts of Calhoun county.

Passed August 5, 1863.

Be it enacted by the Legislature of West Virginia:

1. Any action at law or suit in equity, which might, according to the one hundred and sixty-ninth chapter of the code of Virginia, second edition, be brought in Calhoun county, may be brought either in that county or in Ritchie county.

Suits heretofore cognizable in Calhoun county may be brought in Ritchie.

2. This act shall be in force from its passage.

Chap. 35.—An ACT admitting the county of Berkeley into, and making the same part of, this State.

Passed August 5, 1863.

Whereas, by an act of the general assembly of the state of Virginia, entitled "An act giving the consent of the state of Virginia to the county of Berkeley being admitted into and becoming part of the state of West Virginia," passed January thirty-first, eighteen hundred and sixty-three, it was, among other things, enacted that polls should be opened and held on the fourth Thursday of May, then next, at the several places for holding elections in the said county for the purpose of taking the sense of the qualified voters thereof on the question of including the said county in the state of West Virginia; and if the governor of the said state of Virginia was of opinion that the said vote had been opened and held, and the result ascertained and certified pursuant to law, he should certify the result of the same under the seal of the said state of Virginia to the governor of this state; and if a majority of the votes given at the said polls should be in favor of the said county becoming part of this state, the same should become part of this state when admitted, with the consent of the legislature thereof: And whereas, Francis H. Peirpoint, governor of the commonwealth of Virginia, did, on the twenty-second day of July, in the present year, after reciting that polls were opened in the said county on Thursday, the twenty-eighth

Preamble.

Act of the general assembly of Virginia.

Compliance with said act certified by the governor of Virginia.

day of May, eighteen hundred and sixty-three, for the purpose indicated in the above entitled act, certify under his hand and the less seal of the said commonwealth, that from the returns on file in the executive department thereof, a very large majority of the votes cast at the said election were in favor of the said county of Berkeley becoming part of the state of West Virginia: Therefore,

Be it enacted by the Legislature of West Virginia:

Berkeley county admitted.

Made part of the tenth district, and tenth judicial circuit.

To choose two delegates.

1. The county of Berkeley, lately constituting part of the commonwealth of Virginia, is hereby admitted into and made part of this state, and shall constitute part of the tenth senatorial district, and of the tenth judicial circuit, and shall at the election herein provided for, and at every annual state election thereafter, choose two members of the house of delegates.

Governor to issue proclamation for election.

Officers to be elected.

Governor to appoint superintendents of election.

2. It shall be the duty of the governor, so soon as he shall have reason to believe that an election can be properly held in the said county, to issue his proclamation directing an election to be held on such day as he shall appoint, at the several places for holding elections therein, for the election of two delegates, an assessor, a clerk of the circuit court, sheriff, prosecuting attorney, surveyor of lands, and recorder, and appointing three voters of the said county, any two of whom may act, and any one or more of whom may fill vacancies in their own body, who shall serve as superintendents of the said election.

Superintendents to appoint commissioners and conductors.

To furnish same with poll books, ballot boxes and forms.

Powers of commissioners.

3. The said superintendents shall, for every place of voting in the said county, appoint three commissioners, any two of whom may act, and a conductor, to superintend and conduct the election at the place for which they are appointed. They shall furnish the commissioners for each place of voting with the proper ballot-boxes, poll books and forms. But if at the time the polls should be opened at any place of voting, there shall be present but one commissioner willing to act, he shall associate with himself, as a commissioner, some freeholder of the county then present; and if there be no commissioner present willing to act, any two freeholders of the county present, and willing to act, shall be commissioners.

How the election is to be conducted

Secretary of the state to supply superintendents with blanks and constitutions.

Superintendents to distribute the same.

4. In all other respects the said election shall be conducted, and the result ascertained and returned according to the directions contained in clauses V, VI, VII, VIII, IX, X, XI, XII, XIII, XVII, XIX, XX, and XXI, of an ordinance of the constitutional convention, entitled "An ordinance to provide for the organization of the state of West Virginia," passed February nineteenth, eighteen hundred and sixty-three. The secretary of the state shall prepare and forward in time, to the superintendents to be appointed as aforesaid, poll books and the proper forms of oaths and returns, and three printed copies of the constitution, as amended, for every place of voting in said county; and the said superintendents shall make proper distribution of the same.

Terms of office. When to commence.

5. The terms of office of the persons elected at the election herein directed to be held, shall commence as soon thereafter as they are

qualified, as required by law; but shall continue and be computed as if the same had begun on the first day of January last.

Old officers to hold on till successors qualified.

6. All officers acting within the said county by the authority of the laws of Virginia, and under the reorganized government thereof, at the time of the passage of this act, shall continue to exercise the powers and perform the duties of their respective offices, in the name and under the authority of the state of West Virginia, until the officers elected or appointed under this or any other act of this legislature for the discharge of similar duties, are qualified.

Time of holding terms of circuit court in tenth circuit changed.

7. Clause X of the third section of an act entitled "an act to fix the terms of the several courts," passed at the present session of the legislature, is hereby repealed; and in place thereof it is hereby directed that the commencement of the terms of the circuit courts held in the several counties of the tenth circuit, shall be as follows: For the county of Pendleton, on the first day of March, and the same day of May, September and November; for the county of Hardy, on the tenth day of March, and the same day of May, September and November; for the county of Hampshire, on the twenty-third day of March, and the same day of May, September and November; for the county of Morgan, on the tenth day of April, and on the same day of June, October and December; for the county of Berkeley, on the sixteenth day of April, and on the same day of June, October and December.

When same to be held.

In Berkeley county.

Governor to appoint township commissioners.

8. The governor shall also appoint one person for each magisterial district of the said county of Berkeley, commissioners to divide the same into townships, under the provisions of an act passed at the present session of the legislature, entitled "an act to provide for the division into townships of the several counties of the state."

9. This act shall be in force from its passage.

CHAP. 36.—An ACT defining the powers and duties of Recorders in relation to Wills and Fiduciaries.

Passed September 3, 1863.

Be it enacted by the Legislature of West Virginia:

Recorders' powers same as those heretofore exercised by the county courts.

1. The recorders of every county shall have the same power to hear proof of, and admit wills and authenticated copies thereof to probate; to appoint, take bonds from, and qualify or remove personal representatives, guardians, committees and curators; to require and take new bonds from them; to appoint commissioners to examine the bonds and accounts of fiduciaries and settle with them; to examine reports of such commissioners, confirm them in whole or in a qualified manner or recommit them, or order them to be recorded; and to order the distribution of what appears due on such accounts, that the county courts of the respective counties had on the nineteenth day of June, in the year eighteen hundred and sixty-three, with the qualification hereinafter provided.

But not allowed to empannel juries.

2. Recorders shall not be allowed to empannel juries to settle questions of fact in dispute before them.

To transmit wills to circuit court for probate, in contested cases.

3. When any will is presented to any recorder for probate, and a controversy is likely to arise in relation to its probate, the recorder shall, at the request of any person interested, without deciding the question of probate, transmit such will, and all papers therewith connected, to the clerk of the circuit court of his county.

Right of appeal.

4. Any person interested may, within one year, or if such person be under disability, within one year after the same is removed, of right, appeal to the circuit court from any order made by a recorder in relation to the probate of a will. In case of such appeal, the recorder shall transmit the will in dispute and all papers in his office in relation thereto, and copies of all orders made by him on the subject, to the clerk of the circuit court, on being requested to do so by the party taking the appeal. All the proceedings of recorders under the provisions of this act may be reviewed by the circuit courts within three years, or if the parties interested and wishing to have the same reviewed, be under disability, within three years after such disability is removed, upon petition or by bill in equity.

Revision by circuit court on petition or bill equity.

Jurisdiction of circuit courts not affected.

5. Nothing in this act contained shall be construed to take away from the circuit courts any jurisdiction they now have by law on the subjects referred to in this act.

Record to be kept of proceedings of recorders.

6. In addition to the books of records now provided for by law, each recorder shall keep a book to be provided at the expense of his county, in which shall be entered and indexed all orders made by him under the provisions of this act.

List of deeds, &c., when to be posted.

7. All lists of deeds and other writings, and all commissioners' lists of fiduciaries and notices of settlements, required by law to be posted at the court house door on a county court day, shall be posted at such court house door on the second Monday in every month.

Commissioners of county courts to report to recorders.

8. Every commissioner heretofore appointed by any county court, who had before him, on the nineteenth day of June, eighteen hundred and sixty-three, any bonds or accounts of any fiduciaries for examination or settlement, shall complete such examination or settlement, and make report of his proceedings and return the same to the recorder of his county; and every commissioner hereafter appointed by a recorder under the provisions of this act, shall in the performance of his duties, be governed by the provisions of this act and the laws now in force, except that said commissioner shall make return of his reports to the recorder of his county.

Duties of commissioners appointed by recorders.

When powers granted by first section to be exercised.

9. The recorders of the several counties of this state shall make all orders and do all things required of them to be done under and by virtue of the first section of this act, in their respective offices, on the second Monday in each month, or on the Tuesday or Wednesday following.

Fees.

10. The recorders shall be entitled for their services under the provisions of this act to the same fees that are now allowed by law to the clerks of the county courts for like services.

11. This act shall be in force from and after its passage.

CHAP. 37.—An ACT to provide a remedy where Records or Papers are lost.

Passed September 9, 1863.

Be it enacted by the Legislature of West Virginia:

1. Where any book containing judgments, decrees, orders or proceedings of a court, or proceedings at rules, is lost, and there can be again entered correctly, by means of any writing, any matters which were in such book, the court may cause its clerk to have such matters re-entered, and such entries shall have the same effect as the original entries.

Court records lost may be re-entered upon order of court.

Effect of such entries.

2. Where any such book, or any book containing the record of wills, deeds or other papers, or where any paper filed in a clerk's or recorder's office, is lost, the clerk, or recorder, in whose office such book or paper was, upon the production to him of any original paper which was recorded in the said book or of any attested copy of the record thereof, or of an attested copy of any thing else in such book or of any paper so filed, shall, on application, record or file the same anew. The record shall show whether it is made from an original or a copy, and how the paper from which it was made was authenticated or attested. Such record shall have *prima facie*, the same effect that the record or paper for which it is substituted would have had.

Lost records or papers of clerk's or recorder's office may be entered or filed anew.

What such new record shall show.

Effect of same.

3. If in any cause, the original papers therein, or any of them, or the record for or in an appellate court, or any paper filed or connected with such record, be lost, the court wherein the cause is, or in which, but for such loss it would or ought to be, may docket the same; and on affidavit of such loss, the cause may be proceeded in, heard and determined, upon an authenticated copy of what is lost, or proof of the contents thereof, or if the cause be in an appellate court, upon a new record made up from the records and papers of the court below, and certified by the proper officer. The court may, however, in its discretion, require new pleadings to be made up in whole or in part; and the plaintiff instead of proceeding under this section, may commence and prosecute a new suit for the same matter; and such new suit may, if the former suit was in due time, be brought within one year after such loss, notwithstanding the expiration of the time within which suit must otherwise have been brought.

Where the papers in a suit are lost.

Proceeding of court in such cases.

New suit may be brought.

Within what time.

4. When any book or paper is obliterated, defaced or injured so as to be in whole or in part illegible, or is destroyed or carried away and concealed, or is in the possession or control of armed rebels or a public enemy, it shall be deemed lost for the purposes of this act.

How the term "lost" used in this act to be construed.

5. For any services of the clerk under the first section of this act, unless rendered necessary by his own neglect, the court shall allow him a reasonable compensation, which shall be chargeable on the county. For recording anew any will, deed or other paper, the recorder or clerk shall have the same fees as for the original record, to be paid by the party on whose application such new record is made. For replacing, as aforesaid, the original papers in any cause or the record in an appellate court, the costs and expenses shall be ascer-

Fees of clerk for re-entering court records.

And how paid.

Fees of recorder or clerk for recording papers anew.

By whom paid.

Expenses in other cases, how provided for.

tained under the direction of the court, and adjudged against any party or parties in the cause, or divided among them, as the court may in its discretion determine to be equitable; and so, also, where new pleadings are ordered.

How proof of lost papers and records perpetuated.

Petition to commissioner of circuit court.

Proceedings thereon.

6. Any person desirous of proving the contents of any paper filed in a clerk's or recorder's office, or anything which was of record in any book containing judgments, decrees, orders or proceedings of a court, or proceedings at rules, or the record of wills, deeds or other papers, may, if such paper or book be lost within the meaning of this act, file with a commissioner holding his office under the appointment of the circuit court for the county where such paper or book was filed or kept, a petition stating the nature of the paper or record the contents of which he desires to prove, and what persons may be effected by such proof. Whereupon the commissioner shall appoint a time and place for proceeding on such petition, and cause reasonable notice thereof to be given to the parties interested. If any person who may be affected by the proof be an infant, married woman or insane, the commissioner shall appoint a guardian *ad litem* to attend to the case on his or her behalf.

Proceedings before the commissioner.

His return of his journal and the evidence.

Effect thereof.

7. The commissioner shall, at the instance of any party interested, take in writing the evidence of the witnesses. He may adjourn from time to time, and shall keep a journal of his proceedings. He shall return the said journal, with all the evidence taken by or filed with him, to the clerk's or recorder's office in which the book or paper was that is mentioned in the petition, there to remain as evidence of rights against the parties so notified, and those claiming under them, when better evidence cannot be had.

Laws repealed.

8. Chapter one hundred and eighty of the code of Virginia, second edition, and the eleventh, twelfth, thirteenth and fourteenth sections of chapter one hundred and seventy-six of the said code, are hereby repealed.

9. This act shall be in force from its passage.

CHAP. 38.—An ACT for Districting the State for Representatives in the Congress of the United States.

Passed September 10, 1863.

Be it enacted by the Legislature of West Virginia:

Three congressional districts.

1. The number of members to which this state is entitled in the house of representatives of the United States shall be apportioned amongst the several counties of the state, arranged into three districts, numbered as follows, that is to say:

First district.

Hancock, Brooke, Ohio, Marshall, Wetzel, Tyler, Pleasants, Doddridge, Harrison, Ritchie, Wood, Wirt, Gilmer, Calhoun and Lewis shall form the first district.

Second district.

And the counties of Taylor, Marion, Monongalia, Preston, Tucker, Barbour, Upshur, Webster, Pocahontas, Randolph, Pendleton, Hardy, Hampshire, Berkeley, and Morgan, shall form the second congressional district.

Third district.

And the counties of Kanawha, Jackson, Mason, Putnam, Cabell, Clay, Wayne, Logan, Boone, Braxton, Nicholas, Roane, McDowell, Wyoming, Raleigh, Fayette, Mercer, Monroe, and Greenbrier, shall form the third congressional district.

2. This act shall be in force from its passage.

CHAP. 39.—An ACT providing for the construction of a Road in the county of Hardy.

Passed September 10, 1863.

Be it enacted by the Legislature of West Virginia:

Commissioners appointed.

Appropriation.

How paid.

1. Abijah Dolly, Alfred Zoakum and William Lantz are hereby appointed commissioners to open a wagon road, with a grade not exceeding five degrees of elevation, from Greenland Gap Turnpike to North Fork Turnpike, in the county of Hardy. The sum of one thousand dollars is hereby appropriated for the construction of said road out of the treasury of the state, to be paid upon the order of the said commissioners, in the same manner as other appropriations from the treasury are paid.

But only as work is completed.

2. Said commissioners shall not draw any money out of said appropriation until the part of the work is completed for which such draft may be drawn, and then only upon their written statement on oath that work equal to the amount drawn is performed and the money due for the same.

Commissioners' duties.

3. The said commissioners shall superintend the construction of said road without compensation, and may receive gratuitous labor from the citizens to aid in the construction of said road. The commissioners shall cause the road to be well made, and with as little expense as practicable, so that loaded wagons may conveniently pass the same.

4. This act shall be in force from the passage thereof.

CHAP. 40.—An ACT making appropriations for the Contingent Expenses of the Public Offices.

Passed September 11, 1863.

Be it enacted by the Legislature of West Virginia:

Auditor, treasurer, secretary and adjutant general.

1. There is hereby appropriated for the contingent expenses of the offices of the auditor, three hundred dollars; treasurer, two hundred dollars; secretary of the state, two hundred dollars; and adjutant general, three hundred dollars.

2. This act shall be in force from its passage.

CHAP. 41.—An ACT to authorize certain officers to use their private seals until provided with official seals.

Passed September 12, 1863.

Be it enacted by the Legislature of West Virginia:

What officers authorized to use private seals in certain cases.

1. It shall be lawful for every recorder, clerk of the circuit court, clerk of the board of supervisors and clerk of a township, in the several counties of the state, until provided with an official seal, to use his private seal, (or scroll by way of seal,) in all cases where the use of a seal is required by law or usuage; and wherever the same is so used, his attestation of the instrument, record or copy to which it is annexed shall set forth the fact that he is not provided with an official seal; in which case, and in every case in which his private seal, (or scroll by way of seal,) or the seal of the late county court of his county, has been so used since the nineteenth day of June, eighteen hundred and sixty-three, every such instrument, record or copy shall have the same force and effect as if an official seal had been used.

To have the same force as an official seal.

2. This act shall be in force from its passage.

CHAP. 42.—An ACT to prescribe when Acts of the Legislature shall take effect.

Passed September 14, 1863.

Be it enacted by the Legislature of West Virginia:

To take effect from passage except in certain cases.

1. Every act of the legislature hereafter passed shall take effect and be in force from its passage, unless it be otherwise expressly provided in the act itself, or be manifestly inconsistent with the intention of the legislature; and the day when any act is passed shall be noted in the enrollment and printed copies thereof, next after its title.

Law repealed.

2. The third section of chapter sixteen of the code of Virginia, second edition, is hereby repealed.

3. This act shall be in force from its passage.

CHAP. 43.—An ACT creating a Board of Public Works, and vesting it with rights, powers and duties.

Passed September 24, 1863.

Be it enacted by the Legislature of West Virginia:

Governor, auditor and treasurer made a board of public works.

1. The governor, auditor and treasurer shall be a corporation under the style of the "Board of Public Works," and be vested with all the rights, powers and duties vested in the board of public works of the commonwealth of Virginia on the nineteenth day of June, eighteen hundred and sixty-three.

Secretary of the state made secretary of the board. His duties. Proceedings of board.

2. The secretary of the state shall be secretary of the board. He shall keep a record of the official acts of the board, and shall discharge such other duties as may be prescribed by the board. The proceedings of each day shall be signed by the person presiding on

that day. The said proceedings shall be, at all times, open to inspection.

3. The act passed August fifth, eighteen hundred and sixty-three, entitled "an act conferring on the governor, auditor, treasurer, and secretary of the state the powers and duties of the board of public works," and the tenth section of chapter sixty-six of the code of Virginia, second edition, are hereby repealed. Laws repealed.

CHAP. 44.—An ACT to provide for the Election to be held on the fourth Thursday of October, in the year eighteen hundred and sixty-three.

Passed September 24, 1863.

Be it enacted by the Legislature of West Virginia:

1. An election shall be held on the fourth Thursday of October, in the year eighteen hundred and sixty-three, for the election of delegates to the legislature for the several counties and delegate districts; one or more assessors for every county; a senator for each senatorial district; and a representative in the Congress of the United States for each congressional district; and to fill any vacancies in state or county offices which may have theretofore occurred. Election of Oct. 22, 1863. What officers to be elected.

2. If, owing to the occupation of any county by persons in rebellion or any other cause, the said election is not held in any county on the day herein appointed, the same shall be held for county officers and delegates to the legislature, on such day as may be designated by the superintendents appointed by this act to hold the election for their said county, who shall cause notice to be given of the time of holding such election, by notices posted at three public places within such county, at least ten days before the day so designated. Failure to hold election in any county, on the day appointed.

3. The said election shall be held at the several places of voting established in each county by the laws in force on the nineteenth day of June, eighteen hundred and sixty-three, notwithstanding any act passed at the present session abolishing the former election precincts and the places for holding elections therein. Places of voting.

4. The persons named in the schedule hereto annexed, being three for each county, shall act as superintendents of the said election for their respective counties. Any two of the superintendents for a county may act, and they may fill vacancies in their own body; but if there be no superintendents for any county or not more than one willing to act, the sheriff of such county shall appoint the number necessary to fill the vacancies. Three sup'ts appointed for each county. Two may act. Vacancies provided for.

5. The superintendents for the county shall, for every place of voting therein, appoint three commissioners, any two of whom may act, and a conductor, to superintend and conduct the election at the place for which they are appointed, and shall procure and furnish to them proper ballot-boxes, poll books and forms. Com'rs and conductor for each place of voting. Ballot-boxes, &c.

6. If at the time the polls should be opened, there be, at any place

Vacancies provided for. of voting, but one commissioner willing to act, he shall associate with himself as a commissioner some freeholder of the county then present; and if there be no commissioner willing to act, any two freeholders of the county may act as commissioners. If there be no conductor present willing to act, the commissioners may appoint one. The commissioners may appoint the necessary clerks or writers. Clerks.

Oath of sup'ts, com'rs, &c. 7. Every superintendent, commissioner, conductor, and clerk, before entering on the discharge of his duties, shall make oath that he will support the constitution of the United States and the constitution of this state, and that in the election about to be held, he will faithfully and impartially discharge the duties of his office according to law. The commissioners may administer the oath to each other and any one of them may administer it to the conductor and clerks.

When the polls to be opened and closed. 8. The polls shall not be opened before sunrise and shall be closed at sunset.

Who to vote. 9. The commissioners shall admit all persons to vote who are entitled to vote under the first section of the third article of the constitution; but each person present and offering to vote, shall, if required by any voter, produce to the commissioner the certificate of an officer authorized to administer oaths, that he has taken and subscribed before him the oath to support the constitution of the United States and the constitution of the state of West Virginia. Oath of voter. And any person so entitled, who is necessarily absent from the county on the day of the election, by reason of his duties in the service of the United States or of this state, may within twenty-five days preceding the day of the election, enclose his ballot in an envelope, which he shall seal up, and write his signature in his own proper hand on the outside of the said envelope, and address the same to the superintendents of the election for the county of which he is a resident, either by their names or official designation, and transmit the same to them or one of them by mail or otherwise. Votes of persons absent in the service of the U. S. or this state. And if such envelope and enclosure be received by the said superintendents or any one of them, on or before the day of the election, it shall be produced at the polls held at the court house of the county, and delivered unopened to the commissioners acting at the said court house, if a poll be held at the court house, or if not so held, then at any precinct holding the same, who, if satisfied that the signature on the outside of the envelope is genuine, and that the person whose signature is so endorsed thereon would be, if present, entitled to vote at the said polls, shall open the envelope, and if the ballot found therein be single, shall deposit the same without unfolding or unrolling it so as to disclose its contents, in the ballot-box in like manner as if the person so transmitting his vote, were personally present and offering to vote. And if such ballot be so received and deposited in the box, the clerks shall record the name of the voter on the poll book adding thereto the word "absent." The envelopes in such cases shall be preserved by the commissioners, and be filed by them as soon as possible after the close of the election, in the office of the recorder of the county for public inspection.

10. The commissioners, or any one of them, may swear any person to answer questions respecting any right to vote which is claimed. They shall reject the ballots of all persons not entitled to vote; and in all respects cause the said election to be impartially held according to law. The name of every person whose vote is rejected, shall, if he require it, be entered in a separate list on the poll books under the head "rejected votes;" and in such case his ballot shall be sealed up by the commissioners in an envelope or cover endorsed "The ballot of A B, rejected this twenty-second day of October, eighteen hundred and sixty-three," and be returned with the other ballots to the superintendents for the county.

Disputed votes.

Votes rejected.

11. It shall be the duty of the superintendents for each county to cause the commissioners for every place of voting in the county to be furnished with a proper ballot-box, with an aperture in the lid to receive the ballots of those entitled to vote. The box, while the polls are open, shall be kept where it may be seen by the voters. Every person desiring to vote shall offer to the conductor a single ballot or piece of white paper, on which is printed or written, or partly printed and partly written, the names of the persons for whom he intends to vote, with a designation of the office he desires each to fill; which ballot shall be so folded or rolled that its contents cannot be seen. The conductor shall proclaim the name of the person offering to vote, and hand the ballot to the commissioners, who may examine the same to ascertain if it be single, but without so far unfolding or unrolling it as to disclose its contents; and if they, or a majority of them, are satisfied the ballot is single, and that the person offering it is entitled to vote at said polls, one of the said commissioners shall deposit the ballot in the box, and the clerks shall enter the name of the voter on the poll books, which shall bear on the first page thereof the heading: "Names of all persons voting at ——, in the county of ——, on the twenty-second day of October, eighteen hundred and sixty-three."

Ballot-box.

How votes are to be received,

And deposited in the box, and entered on the poll books.

12. As soon as possible after the polls are closed, the names entered on the poll books shall be counted by the commissioners, and the number set down in words at length at the foot of the list, which shall then be signed by the commissioners, conductor and clerks. The ballot-box shall then be opened by the commissioners, and the ballots found therein be counted in the presence of all the officers employed in conducting the election, and then be again placed in the box. If the number of ballots exceed the number of the names of the voters entered on the poll books, one of the commissioners, in the presence of the other officers, shall promiscuously draw from the box as many ballots as are equal in number to the excess, which, without opening, he shall immediately destroy. One of the commissioners shall then, taking from the box one ballot at a time, read therefrom distinctly the designations of the offices to be filled, and the names of the persons voted for, and hand the ballot to the other commissioner or commissioners, who, if satisfied it was correctly read, shall deliver it to the conductor to be strung by him upon a thread. The contents of the ballots as they are read shall be entered by the clerks, under the su-

The names on the poll books to be counted, &c.

Counting the ballots.

Where the ballots exceed in number the names on the books.

Counting the votes for each candidate.

Ballots folded together to be rejected.
Ballot containing too many names, &c.

pervision of the commissioners, on books or tally papers provided for the purpose, by suitable marks opposite to or under the name of each person voted for, so as to show the number of votes received by every person for any office. If two or more ballots be found folded or rolled up together, they shall be rejected and immediately destroyed; and if any ballot be found to contain more than the proper number of names for any office, it shall not be counted as to the said office.

The com's' certificate of the result at their precinct.

Ballots, poll books and certificates of com'rs', how disposed of.

13. When the result is fully ascertained, the commissioners shall immediately make and sign two certificates to the following effect: "We, the undersigned, commissioners of the election held at ———, in the county of ———, on the twenty-second day of October, eighteen hundred and sixty-three, do hereby certify, that having been first duly sworn, we have fairly and impartially held the said election according to law, and that the result thereof is as follows: For delegate A. B. received ——— votes, and C. D. ——— votes; for assessor, E. F. received ——— votes, G. H. ——— votes; for senator, J. K. received ——— votes, and L. M. ——— votes; and for representative in the congress of the United States, N. O. received ——— votes, and P. R. ——— votes;" and so on, stating according to the truth the name of every person voted for for either of the said offices, and the number of votes he received for the same, and concluding as follows: "Given under our hands this ——— day of October, eighteen hundred and sixty-three." The ballots shall then be enclosed by the commissioners in an envelope or cover, which they shall seal up, and write their names across the seals, and endorse on the envelope or cover the following: "Ballots of the election held at ———, in the county of ———, on the twenty-second day of October, eighteen hundred and sixty-three. The said commissioners, or one of them, shall, on or before the twenty-seventh day of October, eighteen hundred and sixty-three, deliver the ballots so sealed up, one copy of the poll books, and one of the said certificates, to the superintendents of the election for the county; and deposit the other copy of the poll books, and the other certificate, in the office of the recorder of the county, to be there preserved.

The result in each county to be ascertained by sup'ts.

They may open the sealed packages of ballots.

How they are to dispose of same.

14. The superintendents of the election for the county, or a majority of them, shall, on or before the thirty-first day of October, eighteen hundred and sixty-three, carefully and impartially ascertain from the returns received by them, as aforesaid, the result of the said election within their county. For this purpose they may, if deemed necessary and proper, open and examine any of the sealed packages of ballots; but in such case they shall seal the same up again along with the original envelope or cover, in another envelope or cover, and write their names across the seals, and endorse on the outside, "Ballots of the election held at ———, in the county of ———, this twenty-second day of October, eighteen hundred and sixty-three." When they shall have made their certificates as hereinafter provided, they shall return the ballots to the office of the recorder of the county, to be there preserved.

Certificates of the result in each county.

15. The superintendents of the election for each county, or a majority of them having ascertained, as aforesaid, the result of the election

within their county, shall forthwith make and sign the requisite number of certificates to the following effect: "We, the undersigned, superintendents of the election held in the county of ——, on the twenty-second day of October, eighteen hundred and sixty-three, do hereby certify, that having first been duly sworn, we have carefully and impartially examined the returns made to us of the said election, and that, in our said county, for the office of delegate, A. B. received —— votes, C. D. —— votes, E. F. —— votes;" and so on, stating according to the truth the name of every person voted for for the said office, and the number of votes received by him in the county; and concluding as follows: "Given under our hands this —— day of ——, eighteen hundred and sixty-three." They shall in like manner and form make and sign separate certificates of the result within their county of the election for assessor or assessors for the county, for senator in the legislature of the state, for representative in the congress of the United States, and for any officer elected to fill a vacancy.

How the certificates of the result in each county to be disposed of.

16. The certificates made and signed by the superintendents for the county, pursuant to the last section, shall be by them disposed of as follows: Of the certificates respecting the delegate election, they shall transmit one, by some certain and safe conveyance, to the clerk of the House of Delegates, at the seat of government, who shall carefully preserve the same in his office, and shall submit the same, together with a list of persons appearing thereby to be elected, to the House, as soon as it shall thereafter assemble. The said superintendents shall also, if demanded, deliver one of their said certificates to each person appearing to them to have been elected a Delegate. Of the certificates respecting the election of the assessor or assessors for the county, they shall, if demanded, deliver one to each person appearing to them to be elected to the said office. Of the certificate respecting the senatorial election, they shall transmit one by some safe and certain conveyance to the clerk of the Senate at the seat of government, who shall carefully preserve the same in his office, and submit them to the Senate as soon as it shall thereafter assemble, with a list of the persons appearing thereby to be elected. Of the certificates respecting the election of representatives in the Congress of the United States, they shall transmit one by some safe and certain conveyance to the secretary of the state at the seat of government; and in like manner shall dispose of the certificates respecting any election to fill a vacancy. And in each case they shall deposit one of their said certificates in the office of the recorder of their county, to be there carefully preserved, subject to the order of the governor or of either branch of the legislature.

Governor may send for returns.

17. When the governor for any reason, deems it necessary or proper to do so, he may by special messenger or otherwise, send for and procure proper and sufficient returns from any county or counties in which the said election shall have been held.

Representatives in Congress.

18. From the said certificates and returns respecting the election for representatives in the Congress of the United States, the gover-

nor shall ascertain who are elected to the said office, and shall give to each of the persons so elected, a certificate under the great seal of the state to the following effect:

"State of West Virginia, to wit:

I ——, Governor of said state, pursuant to the act of the legislature thereof in such case made and provided, do hereby certify that A. B., of the county of —— was duly chosen on the twenty-second day of October, in the year eighteen hundred and sixty-three, a representative in the Congress of the United States, for the —— congressional district of this state composed of the counties of ——, for the term ending on the third day of March, in the year eighteen hundred and sixty-five. Given under my hand and the great seal of the said state of West Virginia, this —— day of ——."

Number of votes to be written out in words.

19. In all certificates required by this act to be made, where the number of votes for any person is to be stated, such number shall be written out in words at length.

SCHEDULE.

SUPERINTENDENTS OF THE ELECTION FOR THE COUNTY OF

Barbour.—Peter Zinn, William K. Hall, and Martin Myers.
Berkeley.—Christian Shaffer, B. M. Kitchen, aud J. D. Cookers.
Boone.—Adam Toney, William Workman, and Robinson Spurlock.
Braxton.—Craven Berry, Elmore Frame, and James G. McCoy.
Brooke.—Adam Kuhn, Joseph Applegate, and Eli Green.
Cabell.—Ephraim Frampton, Isaiah Ray, and Edward Eden.
Calhoun.—Morgan Marks, James Bier, and William Ellison.
Clay.—James Walker, Sr., William Waggy, and Guy Keith.
Doddridge.—Toliver K. Knight, Noah James, and Simeon Duckworth.
Fayette.—James Scarbrough, James Kinkaid, and William Darlington.
Gilmer.—Matthew Holt, Thomas M. Brannon, and James Cather.
Greenbrier.—J. G. Anderson, Andrew Knight, and Thomas Fewell.
Hampshire.—John Hughes, Thomas R. Carskadon, and Joseph Ritzel.
Hardy.—Abijah Dolly, Aaron Baker, and Charles Scott.
Hancock.—B. J. Smith, D. S. Nicholson, and Joseph S. Allison.
Harrison.—Alstorpheus Werninger, Benjamin F. Shuttlesworth, and John Peck.
Jackson.—Robert R. Riley, Charles Harpold, and David Woodruff.
Kanawha.—Nelson B. Coleman, James Atkinson, and Philip W. Morgan.
Lewis.—P. M. Hale, H. Daugherty, and George Danser.
Logan.—Harvey Hinchman, Rhodes Ballard, and Matthias Brown.
Marion.—Sylvanus W. Hall, Oliver Jackson, and Elmos Hamilton.
Marshall.—William Blake, J. S. Riggs, and W. J. Purdy.
Mason.—James H. Holloway, John Godley, and William Smith.
McDowell.—John Charles, James Mitchell, and Samuel Lambert.

Mercer.—Sylvester Upton, Andrew J. Thompson, and Patton A. McKinney.

Monongalia.—David H. Chadwick, George R. Dering, and Jesse Mercer.

Monroe.—John M. Hutchison, James Chambers, and Caperton McNeer.

Morgan.—Daniel Unger, Jacob Cann, and Thomas Tritapoo.

Nicholas.—John Groves, sr., George Brown, and John R. McCutchen.

Ohio.—William M. Berryhill, Samuel Irwin, and Arthur C. Boggs.

Pendleton.—Sampson Day, Reuben Vance, and Michael Mouse.

Pleasants.—R. Patterson, William Carroll, and Josiah Powell.

Pocahontas.—Benjamin F. Armstrong, David M. Burgess, and John E. Adkinson.

Preston.—Robert McCafferty, Peter S. Barrick, and John S. Murdoch.

Putnam.—Dudley S. Montague, William Cash, and Joseph C. Gery.

Raleigh.—John S. Euart, Andrew J. Harper, and Samuel McGinnis.

Randolph.—Willis J. Drummond, Asbury Stalnaker, and Harmon Snyder.

Ritchie.—John B. Yeager, Thomas Reitz, and Alexander Lowther, jr.

Roane.—H. D. Chapman, James A. Daniell, and Isaac McKown.

Taylor.—James W. Burdett, Thomas Cather, and Stephen Behen.

Tucker.—David Wheeler, Adam H. Bowman, and Adam Tate.

Tyler.—Z. Peirpoint, Levi Heysham, and Robert Stathers.

Upshur.—Thomas J. Farnsworth, Edward J. Colerider, and Simon Rohrbough.

Wayne.—John S. Hutcherson, Thomas Huxam, and M. C. Newman.

Wetzel.—Jacob Young, W. D. Walker, and George W. Bier.

Webster.—Adam Gregory, William G. Hamrick, and James P. Green.

Wirt.—M. L. Lockhart, H. W. Rockhold, and William D. Timms.

Wood.—Bennett Cook, Edward Tracewell, and Rufus Kinnaird.

Wyoming.—Capt. William Walker, Capt. James Cook, and Bullard Shannon.

CHAP. 45.—An ACT in relation to Suits against Non-Residents.

Passed September 25, 1863.

Be it enacted by the Legislature of West Virginia:

1. Section first of chapter one hundred and fifty-one of the code of Virginia, second edition, shall be amended and re-enacted to read as follows:

Section 1 of chapter 151 amended, and re-enacted.

"1. When any suit is instituted for any debt or for damages for breach of any contract, on affidavit stating the amount and justice of the claim, that there is present cause of action therefor: or where it is to recover damages for any wrong, stating a certain sum, which, at the least, the affiant believes the plaintiff is entitled to, or ought to recover; that the defendant or one of the defendants is not a resident of this state, and that the affiant believes he has estate or debts due him within the county in which the suit is, or that he is sued with

Recovery of damages.

a defendant residing therein, the plaintiff may forthwith sue out of the clerk's office an attachment against the estate of the non-resident defendant for the amount so stated."

CHAP. 46.—An ACT providing for and regulating Township Meetings and Elections.

Passed September 25, 1863.

Be it enacted by the Legislature of West Virginia:

First township meeting and election.

1. The first meeting of the voters of each township, and the first election therein for township officers, shall be held on the day, at the place, and in the manner, directed in the schedule hereto annexed; and shall be conducted according to the provisions contained in the body of this act applicable thereto, except so far as the same are changed or modified as to the said first meetings and elections by the provisions of the said schedule. All subsequent annual township meetings and elections shall be held on the fourth Thursday in April in each and every year, at such convenient place within the township as shall be from time to time appointed by the board of supervisors of the county.

Annual meetings and elections, when and where held.

Chairman of meetings. Clerk of same. Duties of.

2. The supervisor of the township shall be chairman of the township meetings, but if he be absent the qualified voters at such township meeting may choose a chairman. The township clerk shall be clerk of the township meetings, and shall keep faithful minutes of the proceedings, and shall enter at length every order or direction, and all rules and regulations made by the meeting. If the township clerk be absent, the voters present shall select another person to act as clerk of the meeting. The minutes of each meeting shall be signed by the chairman and attested by the clerk.

How minutes signed.

At what hour meetings to assemble.

3. Every annual township meeting shall assemble for the transaction of business at the hour of nine in the forenoon of the appointed day; and at any annual or special election of township officers, if there is a township meeting on the same day, the polls shall be opened at the hour of eleven, unless the business of the meeting be sooner concluded, or the same be sooner adjourned, in which case the polls may be opened immediately thereafter, and in either case shall continue open, (with a recess of not more than one hour, if the inspectors so direct, at such time as they may appoint,) until sunset of the same day when the polls shall be finally closed. If the meeting has not completed its business when the hour for opening the polls arrives, it may adjourn until the next day, and from day to day until its business is completed. Meetings appointed for a day on which there is no public election held in the township, may be appointed for and held at such hour, not later than three in the afternoon, as may be indicated in the notice convening them.

Opening and closing of polls.

Hour of meeting.

Legal meeting how constituted.

4. To constitute a legal township meeting, the fact must appear and be entered on the minutes, that notice of the time and place of hold-

ing the same has been duly given as required by law; and that there are present, if the township is entitled to elect but one justice, at least twenty voters thereof, and if it is entitled to elect two justices, at least thirty such voters; but if due notice has been given, a less number in either case may adjourn to another day. Any meeting duly constituted and held may adjourn from day to day or to a day certain; or it may direct another meeting to be convened and held on such day previous to the next annual meeting, as it may appoint. Special meetings shall be convened whenever directed by the supervisor of the township, or whenever any ten voters thereof, by writing, stating the object of the proposed meeting, signed with their proper hands, and filed with the clerk of the township, shall so request. Of the time and place of holding all meetings to be held in pursuance of adjournment, unless from day to day; of all special meetings, and of the annual meetings, the clerk shall cause notice to be given in the manner hereinafter directed; but the annual meetings shall not fail for want of such notice, if the number of voters present be sufficient. No business besides that mentioned in the notice convening it shall be transacted at a special meeting.

Adjournment.

One meeting may call another.

Special meetings how called.

Notice to be given of all meetings.

But annual meetings not to fail for want thereof.

Business of special meetings.

5. At every township meeting all propositions, motions, orders and resolutions properly presented by any voter of the township and seconded by another, shall be distinctly put to vote by the presiding officer, and be decided by the votes given by a majority of the voters present and voting on the question. The mode of voting shall be by an oral vote in the usual manner, or by a show of hands, or if the chair so direct, or any voter demand it before the result of the vote is announced, there shall be a division and count; in which case the chair may direct those voting affirmatively to go to his right, and those voting negatively to go his left, and all persons present not entitled to vote, to retire beyond such limit as he may designate; when he and the clerk shall ascertain the numbers voting each way, and the result however ascertained, shall be announced by the chair and recorded on the minutes of the meeting by the clerk. When any proposition, motion, order or resolution is offered, any voter present may move to amend the same, and if the question before the meeting admits, different numbers or times may be proposed by the voters present; in which case the vote shall first be taken on the greatest number or longest time; and so on until some number or time proposed receives a majority of the votes given. In cases of appointments to be made by the meeting, any voter may propose a candidate, and if two or more are proposed and the number of votes given for each cannot be otherwise conveniently ascertained, the chair may direct those voting for each candidate to separate themselves from all others; when he and the clerk shall proceed to ascertain the members voting for each candidate; and if neither has a majority, the vote shall be repeated until there is a majority for one of the nominees. The clerk shall record on the minutes, the result of the deciding vote only. In all other respects, the proceedings of the meeting shall be conducted with reference to the usual parliamentary rules applicable to the case before

Manner of conducting business of meetings.

it; but no question already disposed of at a township meeting shall be reconsidered, unless the motion for such consideration shall be sustained by a number of votes equal to a majority of the highest vote recorded at such meeting, up to the time such motion shall be made. If questions of order arise, they shall be promptly decided by the chair, from whose decision there may be an immediate appeal to the meeting, the question arising on which, shall be stated by the chair and be put without discussion.

Terms of officers.

6. The terms of all township officers, including the supervisors, not elected to fill a vacancy, shall commence and be computed from the twentieth day of June next after the annual election at which they are elected. Elections to fill vacancies shall be for the unexpired term; and the persons elected, having first duly qualified, shall enter upon the duties of their respective offices within ten days after the board of supervisors have declared them elected. In case of a vacancy in any township office except that of inspector of elections, the supervisor may, if he deem proper, and shall, if requested in writing by any ten voters of his township, direct a special township meeting to be held at such time as he may appoint, for the purpose of filling such vacancy; and such meeting, when duly constituted, shall proceed to appoint a suitable person to exercise the powers, discharge the duties and receive the emoluments of such office until the twentieth day of June first after the next annual township election. At such election, if the vacant office is elective, and the term of the former incumbent does not expire on the said twentieth day of June, a suitable person shall be elected to fill such office from the said day until the expiration of said term.

Vacancies.

Special meetings called to fill.

How clerk shall give notice of meetings.

7. When notice is required to be given of any township meeting, election, or other proceeding or matter, the clerk of the township shall prepare a suitable notice of the same and three copies thereof, all of which he shall sign with his name and official designation, and shall cause the said copies, respectively, to be conspicuously posted at three of the most public places in his township by a constable thereof, or in case of his absence from the township or inability to act, by some other person, for which service and making affidavit of the time and manner of performance thereof, and returning the same to the clerk, the said officer or person shall be entitled to receive from the township treasury, for each copy duly and properly posted and affidavit thereof returned as aforesaid, a fee of fifty cents. The original notice, with the affidavit or affidavits of the officer or person who posted the copies annexed or attached, shall be filed by the clerk in his office. All notices of township meetings and elections shall be so posted at least ten and not more than twenty days before the time appointed; and at least ten days notice shall be given of any matter or event in which the township is interested of which notice is required. Any township meeting at which such business is in order, may from time to time prescribe the places at which notices shall be posted, and may also in any case direct a copy of the required notice to be inserted in some newspaper circulated in their township, at the

Fees for same.

Time of such notice.

Place of posting notice how prescribed.

Notice may be advertised in newspapers.

expense thereof. But no annual meeting or annual election, or any proceeding thereof or thereat, shall be deemed illegal for want of such notice. Every notice convening a special or adjourned meeting shall plainly state the objects or purposes for which the same is convened. But annual meetings and elections not illegal for lack of notice. What notice to contain.

SCHEDULE.

1. The first township meetings and elections in the several townships of the state, shall be held at such place within each township, and at such time, as may be designated by the commissioners thereof, or a majority of them, appointed by an act passed at the present session of the legislature, entitled "an act to provide for the division into townships of the several counties of the state;" but if owing to the occupation of any county or part thereof by persons in rebellion against the United States, or any other cause, the said first meeting and election is not held in any township on the day appointed, the same shall be held on such day as may be designated by the commissioners thereof appointed as aforesaid, for the county wherein such township is situated. The said commissioners shall cause notice to be given of the time and place of holding such meeting and election, by notices posted at three public places within such township, at least ten days before the day so designated. But if from any cause, the commissioners in any county shall fail to fix a day for the first meeting and election in any township, then any three qualified voters thereof may call a meeting and election of the voters of such township, by giving the like notice required to be given by the commissioners aforesaid. Time and place of holding first meetings and elections by whom fixed. If not held according to appointment. Commissioners to name another day. Commissioners' notice. If commissioners do not fix a day, the alternative.

2. When the hour of nine in the forenoon of the day appointed for holding the first township meeting and election has arrived, any voter present may call the meeting to order, which shall be thereupon organized by the appointment of a temporary supervisor and clerk; and when organized, if the number of voters requisite to constitute a quorum be present, shall proceed to appoint two temporary inspectors of elections, who, together with the temporary supervisor and clerk, shall exercise the powers and discharge the duties in reference to superintending, conducting and certifying and returning the results of the election to be held in such township on the same day, as are reposed in and required of such officers by the provisions of the general election law. Manner of business in first meeting and election.

3. The first meeting in each township shall appoint a committee of three or more voters, who shall, as soon as practicable thereafter, proceed to divide the township into as many road precincts as the meeting shall direct, or if no such direction be given, as the committee shall deem proper and convenient, not including the streets or roads within a city or incorporated town which levies an annual tax and provides for keeping the streets or roads within the same in order. The committee shall report the division made by them, to a special township meeting, the time and place for holding which shall be fixed Committee to divide townships into road precincts. Their duties. Their report.

by the first meeting, of which the clerk of the township shall cause due notice to be given. If the division of the committee, as reported by them, or as amended by the meeting, is then adopted, or whenever the same is adopted, an election for a surveyor of roads for each road precinct, being a voter and resident thereof, shall be held, if in the opinion of the meeting there is time, on the same day, and if otherwise, on the next day, at such hour as it may appoint. Such election shall be superintended and conducted and the result ascertained, certified and returned as other township elections; but if any ballot contain the names of two or more persons residing in the same road precinct, it shall not be counted for either.

Road surveyors, how elected.

Terms of officers first elected.

4. The terms of office of the officers elected at the first township elections, if the same are held before the time for holding the state and county elections in the present year, shall commence on and include the tenth day after their respective elections, but shall continue and be computed as if the same had begun on the twentieth day of June in the present year. But if the time of holding the first election occurs after the said state and county elections, and before or at the time appointed for holding the annual township elections in the year one thousand eight hundred and sixty-four, the terms of the officers then elected shall commence on and include the tenth day thereafter, but shall continue and be computed as if the same had begun on the twentieth day of June next.

CHAP. 47.—An ACT making an appropriation for the payment of Capt. Evan C. Harper's company of Home Guards.

Passed September 29, 1863.

Be it enacted by the Legislature of West Virginia:

One thousand dollars appropriated.

1. A sum not exceeding one thousand dollars is hereby appropriated, out of any money in the treasury not otherwise appropriated, for the purpose of paying Capt. Evan C. Harper's company of home guards, of the county of Pendleton, for services rendered to the state of Virginia; provided the same be received as full compensation for their services prior to June twentieth, eighteen hundred and sixty-three.

As full compensation to certain date.

2. When satisfactory evidence of the service of said company is produced to the governor, he is hereby authorized to draw his warrant on the auditor for a sum not exceeding one thousand dollars, to pay for said service, and the auditor is hereby required to pay the same out of any money in the treasury not otherwise appropriated.

CHAP. 48.—An ACT to regulate the remission of Fines and Penalties, by the Executive.

Passed September 29, 1863.

Be it enacted by the Legislature of West Virginia:

In what cases the governor may act.

1. Where any fine or penalty has heretofore been imposed under the laws of Virginia or of this state, or shall hereafter be imposed under

the laws of this state, if the same or any portion thereof would, when collected, be payable into the treasury and has not been so paid, the governor may, on good cause shown by affidavit, or upon the recommendation of the judge and a majority of the jury who tried the case, remit so much thereof as may be payable into the treasury, or a less amount, unconditionally, or upon such terms and conditions as may seem to him right and equitable. But of every order issued by him under this act, due record shall be made by the secretary of the state on the journal of executive proceedings, and reported to the legislature.

Record of orders to be kept by the secretary and reported to legislature.

Chap. 49.—An ACT for the relief of William H. Shaw, Sheriff of Putnam county.

Passed September 29, 1863.

Be it enacted by the Legislature of West Virginia:

1. The auditor is hereby instructed to credit William H. Shaw, sheriff of Putnam county, with twenty-three dollars in the settlement of the said Shaw for the revenue of said county for the year eighteen hundred and sixty-two ; the said sum having been taken by force, by armed rebels, from Benjamin P. Morris, deputy of said sheriff, in January, eighteen hundred and sixty-three.

Twenty-three dollars allowed in settlement.

Chap. 50.—An ACT for the relief of S. S. Lockney, Commissioner of the Revenue for Barbour county in the year eighteen hundred and sixty-one.

Passed September 29, 1863.

Be it enacted by the Legislature of West Virginia:

There is hereby appropriated the sum of fifty dollars for the benefit of S. S. Lockney, of Barbour county, for services as commissioner of the revenue for said county in the year eighteen hundred and sixty-one.

Fifty dollars appropriated.

Chap. 51.—An ACT regulating the penalty of the Bond of the Sheriff of Kanawha county.

Passed September 30, 1863.

Be it enacted by the Legislature of West Virginia:

The penalty of the first official bond required of the sheriff of Kanawha county for the faithful performance of his official duties shall not exceed twenty-five thousand dollars. But the circuit court of the county or the judge thereof in vacation may increase the penalty.

Not to exceed $25,000. But may be increased.

Chap. 52.—An ACT supplementary to the act passed September 24, 1863, entitled "An act to provide for the election to be held on the fonrth Thursday of October, in the year eighteen hundred and sixty-three."

Passed September 30, 1863.

Be it enacted by the Legislature of West Virginia:

1. A commissioner or conductor at any place of voting may administer the oath to support the constitution of the United States and the

Conductors or commissioners to administer oaths.

constitution of this state to any person offering to vote at such place who may have been required by a voter to take the same; and if the person offering to vote take the oath before a commissioner or conductor, as aforesaid, no written evidence or certificate of his having taken and subscribed the same need be produced. Effect of same.

Election of assessors. 2. There shall be elected on the fourth Thursday of October, eighteen hundred and sixty-three, in each of the counties of this state, by the voters thereof, one or more assessors for the term ending on the first day of January, eighteen hundred and sixty-five, to fill the vacancy now existing in said offices; that is to say, the counties of Barbour, Greenbrier, Hampshire, Hardy, Harrison, Kanawha, Lewis, Marshall, Marion, Mason, Monongalia, Monroe, Ohio, Preston, Randolph, and Wayne, shall each elect two assessors, one for each of the present revenue districts into which the said counties are now respectively divided; and the other counties shall each elect one assessor. Number elected by counties respectively.

Oath and bond. 3. Every assessor, elected as aforesaid, shall qualify and give bond within the time prescribed by law. His bond shall be in the penalty of three thousand dollars, to be approved by the recorder of the county, and filed in the office of the said recorder.

Chap. 53.—An ACT for the relief of William Nixon, Collector of the Revenue for Wayne county.

Passed October 3, 1863.

Be it enacted by the Legislature of West Virginia:

Allowed $845 in settlement. The auditor is hereby instructed to credit William Nixon, collector of the revenue for Wayne county, with eight hundred and forty-five dollars, in the settlement of the said Nixon for the revenue of said county for the year eighteen hundred and sixty-two, the said sum having been taken from said William Nixon by force, by some rebels, in September, eighteen hundred and sixty-two.

Chap. 54.—An ACT to regulate the Tax on Seals.

Passed October 3, 1863.

Be it enacted by the Legislature of West Virginia:

What seals taxed. 1. When the seal of a recorder, of a court, of a notary public, or the seal of the state, is annexed to any paper, except in those cases exempted by law, the taxes shall be as follows: For the seal of the state, one dollar; and for any other seal, fifty cents; and the tax shall be the same though a scroll be used in lieu of an official seal. How much.

Exception. 2. No tax shall be levied, or fee be charged, when the seal of the state is affixed to the commission of a judge or military officer.

Law repealed. 3. The forty-second section of the act of the general assembly of Virginia, passed February third, eighteen hundred and sixty-three, entitled "an act imposing taxes for the support of the government," is hereby repealed.

CHAP. 55.—An ACT to provide for the sale of certain property distrained or levied upon.

Passed October 3, 1863.

Be it enacted by the Legislature of West Virginia:

Sections thirty-seven and thirty-eight of chapter forty-nine of the code of Virginia, shall be amended and re-enacted to read as follows:

Laws amended and re-enacted.

"37. In any case of goods and chattels which an officer shall have distrained or levied upon or may hereafter distrain or levy upon, otherwise than under an attachment, which he may be directed to sell by an order of court, judge, or justice, (unless such order prescribes a different course,) he shall fix upon a time and place for the sale thereof, and publish notice of the same at least ten days, at some place near the residence of the owner, if he resides in the county, and at two or more public places in the officers's county or district. If the goods and chattels be slaves, mules, work oxen or horses, notice of the sale, which shall be conducted as prescribed in the next succeeding section, shall be published at the door of the court house of such officer's county, and at two or more other public places in such county (one of which shall be near the residence of the owner, if he reside in the county,) for at least twenty days. At the time and place so appointed, the officer shall sell to the highest bidder, for cash, the said goods and chattels, or so much thereof as may be necessary.

Twenty days notice of sale to be given.

"38. If such goods and chattels be slaves, mules, work oxen or horses, they shall be sold at the court house of the county, between the hours of ten in the morning and four in the afternoon. The sale shall be on the second Monday in the month, or on a circuit court day, except where the parties shall, at or before the time for advertising the same, in writing, authorize the officer to dispense with the provisions of this section, in which case the sale shall be according to the preceding section."

Day of sale.

CHAP. 56.—An ACT accepting the conditions of the Act of Congress of July second, eighteen hundred and sixty-two, donating public lands to the several States and Territories which may provide Colleges for the benefit of Agriculture and the Mechanic Arts.

Passed October 3, 1863.

Whereas, By an act of congress approved July second, eighteen hundred and sixty-two, there is granted to the several states for the purposes mentioned in the said act, an amount of public land, to be apportioned to each state, equal to thirty thousand acres for each senator and representative in congress, to which the states are respectively entitled under the census of eighteen hundred and sixty; but the secretary of the interior is thereby directed to issue to each of the states in which there is not the quantity of public lands subject to sale at private entry, at one dollar and twenty-five cents per acre, to which said state may be entitled under the provisions of the said act, land-scrip to the amount in acres for the deficiency of its distributive share,

Act of Congress recited.

said scrip to be sold by said states and the proceeds thereof applied to the uses and purposes prescribed in the said act, and for no other use or purpose whatsoever; and whereas, it is also provided by the said act of congress that in no case shall any state to which land-scrip may thus be issued be allowed to locate the same within the limits of any other state or of any territory of the United States, but their assignees may thus locate said land-scrip upon any of the unappropriated lands of the United States, subject to sale at private entry at one dollar and twenty-five cents, or less, per acre; and whereas, it is further provided by the said act that the grant thereby authorized shall be made on certain conditions therein expressed, to which, as well as the provisions in the said act contained, the previous assent of the several states shall be signified by legislative acts; and that no state shall be entitled to the benefit of the said act of congress unless it shall express its acceptance thereof by its legislature within two years from the date of the approval of the said act by the president.

And whereas, it is manifestly to the interest of the good people of West Virginia that the said act of congress should be accepted on their behalf, and provision made according to the terms of the said act for establishing, within five years from the date of its approval, a college for the purposes therein indicated. Therefore,

Be it enacted by the Legislature of West Virginia:

Conditions of the act accepted.

1. The act of congress approved the second day of July, eighteen hundred and sixty-two, entitled "an act donating public lands to the several states and territories which may provide colleges for the benefit of agriculture and the mechanic arts," with all the conditions and provisions therein contained, is hereby accepted on behalf of the state of West Virginia, with the desire hereby expressed by the legislature, that should a doubt arise whether said state is a grantee under the act aforesaid, then that the provisions of said act may be extended to our state by future legislation of congress; and the governor of this state is directed to certify this act to the president of the United States and the secretary of the interior, and to receive from the said secretary the land-scrip to which this state is or may be entitled under the said act of congress, divided, if practicable, into scrip for sections, half sections, and quarter sections, and to advertise the same for sale, and sell the same, at such time or times, and in such parcels, as he may find the interest of the trust to require.

Duty of the governor.

Fund, how invested.

2. All money derived from sales of the said land-scrip shall be invested by the governor in stocks of the United States, yielding not less than five per centum upon the par value of the said stocks; and upon every certificate of stock received as aforesaid, he shall forthwith cause to be plainly written or printed the following words: "Held by the state of West Virginia in trust, under the act of congress approved July second, eighteen hundred and sixty-two, entitled 'an act donating public lands to the several states and territories which may provide colleges for the benefit of agriculture and the mechanic arts.'"

To remain perpetual.

3. The money so invested shall constitute a perpetual fund, the capital of which shall remain forever undiminished, except so far as is

provided in the fourth section of this act; and the interest of which shall be inviolably appropriated to the endowment, support and maintenance of a college, where the leading object shall be, without excluding other scientific and classical studies, and including military tactics, to teach such branches of learning as are related to agriculture and the mechanic arts, in such manner as the Legislature may prescribe, in order to promote the liberal and practical education of the industrial classes in the several pursuits and professions in life.

Interest, how applied.

Object of the college.

4. If any portion of the fund so invested, or any portion of the interest thereon, shall, by any action or contingency, be diminished or lost, it shall be replaced by this state, so that the capital of the fund shall remain forever undiminished; and the annual interest shall be regularly applied without diminution to the purposes mentioned in the third section of this act; except that a sum not exceeding ten per centum upon the amount received by this state under the provisions of the said act of congress, may be expended for the purchase of land for sites or experimental farms, whenever authorized by the legislature of this state.

Losses of fund to be replaced by the state.

Interest only to be expended.

Exception.

5. No portion of said fund, nor the interest thereon, shall be applied directly or indirectly, under any pretense whatever, to the purchase, erection, preservation or repair of any building or buildings.

No portion to be expended for building.

6. This state shall, within five years from the said second day of July, eighteen hundred and sixty-two, provide one college as described in the third section of this act, or the grant to this state shall cease, and the state shall be bound to pay to the United States the amount received of any lands previously sold.

Time when college to be established.

7. An annual report shall be made regarding the progress of the college, recording any improvements and experiments made, with their cost and results, and such other matters, including state, industrial, and economical statistics, as may be supposed useful; one copy of which shall be transmitted by mail, free, by the said college to all the other colleges that may be endowed under the provisions of the said act of congress; and also one copy to the secretary of the interior.

Annual report of college.

8. The governor of this state shall, as required by the eighth section of the said act of congress, report annually to congress all sales made of such scrip until the whole shall be disposed of, the amount received for the same, and what appropriation has been made of the proceeds.

Annual report of governor.

9. The sum of five hundred dollars, to be paid out of the treasury on requisitions of the governor, is hereby appropriated to defray any expenses that may be incurred in procuring the said land-scrip, advertising and selling the same, and investing the proceeds.

Appropriation.

CHAP. 57.—An ACT declaring how certain provisions of the Code of Virginia shall be construed.

Passed October 3, 1863.

Be it enacted by the Legislature of West Virginia:

Day of county court construed to mean second Monday of the month.

Exception,

Any provision of the code of Virginia directing or authorizing an act to be done, or proceeding to take place on the first or any subsequent day of the term of a county court, shall be construed as if the time thereby appointed for such act or proceeding was the second Monday of the month; but this shall not be deemed to apply to orders of publication or to any other act or proceeding which is or may be otherwise specially provided for.

CHAP. 58.—An ACT providing how Lands heretofore or hereafter sold for Taxes and not redeemed, shall be Surveyed and Conveyed.

Passed October 7, 1863.

Be it enacted by the legislature of West Virginia:

Redemption money in certain cases, to whom paid.

Report of surveyor, how returned.

Proceedings heretofore in county court to be had in circuit court.

Orders of circuit judge, where returned and recorded.

Deeds, by whom made.

Contents thereof.

Where recorded.

Fees for.

What is authorized to be paid under the fourteenth section of chapter thirty-seven of the code of Virginia (edition of eighteen hundred and sixty) to the clerk of the court of any county, may be paid to the recorder of the county. Any plat and certificate or report to be returned or made to any county court, under the fifteenth and sixteenth sections of said chapter, shall be returned or made to the circuit court of such county, or to the judge thereof in vacation. Any proceeding or order to be had or made in or by the county court of any county, according to the provisions of said chapter, shall be had or made in or by the circuit court for the county, or by the judge thereof in vacation. Any order made by virtue of this act by a judge in vacation, shall be returned by him to the clerk of the circuit court of the county wherein the sale was made, and shall be by such clerk forthwith entered of record in the law order book of said court. Any deed to be made under said chapter by the clerk or deputy clerk of the county court, shall be made by the recorder of the county, unless he is interested, and then it shall be made by the clerk of the circuit court of the county; in which deed shall be set forth all the circumstances appearing in the circuit court clerk's office, or in the recorder's office, in relation to the sale, and it shall conform in all other respects to the requirements of said chapter. Deeds required by said chapter to be recorded in the court of any county, shall be recorded in the office of the recorder of the county. For every deed executed under this act, the clerk of the circuit court or recorder shall be entitled to one dollar and fifty cents; which the purchaser shall pay him on the delivery of the deed.

CHAP. 59.—An ACT to alter part of the division line between the counties of Wood and Wirt.

Passed October 7, 1863.

Be it enacted by the Legislature of West Virginia:

Division line between Wood and Wirt counties changed.

1. The division line between the counties of Wood and Wirt, running from the Little Kanawha river towards the county of Jackson, is

hereby so altered as to extend the same from the Limestone Hill, on the top of the ridge, to the line between the counties of Jackson and Wood, making a straight line from the said river to the said line of the county of Jackson; and so much of the county of Wood as lies to the east of the said extension is hereby annexed to and made part of the county of Wirt.

Surveyor of Wirt county to make plats of survey.

How same disposed of.

2. The annexation herein provided for shall not be of force until the surveyor of the county of Wirt shall run and mark the said extension, and make three fair plats thereof, each of which he shall duly certify, and forward one to the secretary of the state, another to the recorder of the county of Wood, and the third to the recorder of the county of Wirt; who shall file and carefully preserve the same in their respective offices.

Fees of Surveyor paid from the treasury of Wirt.

3. The account of the said surveyor for his fees and expenses incurred under the provisions of this act, shall be audited by the board of supervisors, and paid out of the treasury of the county of Wirt.

CHAP. 60.—An ACT to give the Circuit Courts jurisdiction in suits for the maintenance of illegitimate children.

Passed October 8, 1863.

Be it enacted by the Legislature of West Virginia:

Chapter 125. of the Code amended.

The one hundred and twenty-fifth chapter of the Code of Virginia, second edition, shall be amended by striking out of the first section of the said chapter the words "court for the county or corporation," and inserting in place thereof the words "term of the circuit court for the county;" and by striking out of the sixth section of said chapter the words "court of the county or corporation," and inserting in place thereof the words "circuit court of the county."

CHAP. 61.—An ACT to alter part of the division line between the counties of Ritchie and Gilmer.

Passed October 8, 1863.

Be it enacted by the Legislature of West Virginia:

Division line between Ritchie and Gilmer counties altered.

1. The division line between the counties of Ritchie and Gilmer is hereby so altered as to annex to, and include within the county of Ritchie the dwelling house and curtilage of Elisha L. Snodgrass, and so much additional land as may be necessary to straighten, as far as practicable, the said division line; but the territory thereby added to the county of Ritchie shall not exceed in the aggregate one hundred and fifty acres.

Surveyor of Ritchie county to make plats of survey.

How same disposed of.

2. The annexation herein provided for shall not be of force until the surveyor of the county of Ritchie shall run and mark the said alteration of the said division line, and make three fair plats thereof, each of which he shall duly certify, and forward one to the secretary of the state, another to the recorder of the county of Gilmer, and the

third to the recorder of the county of Ritchie; who shall file and carefully preserve the same in their respective offices.

Fees of Surveyor paid from the treasury of Ritchie.

3. The account of the said surveyor for his fees and expenses incurred under the provisions of this act, shall be audited by the board of supervisors and paid out of the treasury of the county of Ritchie.

Chap. 62.—An ACT to alter part of the division line between the counties of Taylor and Harrison.

Passed October 9, 1863.

Be it enacted by the Legislature of West Virginia:

Division line between the counties of Taylor and Harrison altered

1. The division line between the counties of Taylor and Harrison is hereby so altered as to include within and make part of the county of Taylor the farms of Solomon Frum, George Bailey, Silas P. Bailey, and Samuel Bartlett, now in the county of Harrison.

Surveyor of Taylor to make plats of survey.

How same to be disposed of.

2. The alteration herein provided for shall not be of force until the surveyor of the county of Taylor shall run and mark the new line or lines, and make three fair plats thereof, which he shall duly certify, and forward one to the secretary of the state, another to the recorder of the county of Harrison, and the third to the recorder of the county of Taylor; who shall file and carefully preserve the same in their respective offices.

Fees of Surveyor paid from the treasury of Taylor.

3. The account of the said surveyor for his fees and expenses incurred under the provisions of this act, shall be audited by the board of supervisors, and paid out of the treasury of the county of Taylor.

Chap. 63.—An ACT to alter part of the division line between the counties of Raleigh and Mercer.

Passed October 10, 1863.

Be it enacted by the Legislature of West Virginia:

Division line between the counties of Raleigh and Mercer altered.

1. The division line between the counties of Raleigh and Mercer is hereby so altered as to run as follows, to-wit: Beginning at the mouth of Madam's creek, at a corner of the counties of Raleigh, Greenbrier, Mercer and Monroe, and running thence up New river, with the meanders thereof, to the mouth of Big Bluestone run; thence up the same, with the meanders thereof, to the mouth of Little Bluestone run, and thence with the road up the mountains, passing the residence of Jonathan Lillies and Jacob Manns, to the old line between the counties of Mercer and Raleigh.

To be ratified by the voters of the counties.

Surveyor of Raleigh to make plats of survey.

2. The alteration herein provided for shall not be of force unless the same is ratified by a majority of the votes cast, "for alteration" and "against alteration," at the first township election to be held in the county of Raleigh, and also by a majority of the votes cast as aforesaid, at the first township election to be held in the county of Mercer, nor unless the surveyor of the county of Raleigh shall run and mark the above described new lines, and make three fair plats

thereof, which he shall duly certify, and forward one to the secretary of the state, another to the recorder of the county of Mercer, and the third to the recorder of the county of Raleigh; who shall file and carefully preserve the same in their respective offices. How same to be disposed of.

3. The superintendents of election of each county shall cause notice to be given of the vote to be cast for and against the alteration of said line, at least ten days before the day of election, by posting up notices at some public place in each township. Notice of election or ratification.

4. The account of the said surveyor for his fees and expenses incurred under the provisions of this act, shall be audited by the board of supervisors, and paid out of the treasury of the county of Raleigh. Fees of surveyor paid from the treasury of Raleigh.

CHAP. 64.—An ACT concerning the county of Clay.

Passed October 10, 1863.

Be it enacted by the Legislature of West Virginia:

1. The boundary lines of the county of Clay as established by an act of the general assembly of Virginia, entitled "an act to form the county of Clay out of part of the counties of Braxton and Nicholas," passed March twenty-ninth, eighteen hundred and fifty-eight, shall be the boundary lines of said county of Clay; and so much of the territory, late of the county of Kanawha, as is included within the said lines, is and shall continue to be part of the county of Clay. Boundary lines confirmed.

2. The name of the county seat of the county of Clay is hereby changed to Henry, by which name it shall hereafter be known and denominated. Name of county seat changed.

CHAP. 65.—An ACT to authorize the Clerk of the Circuit Court to issue Executions on Judgments of Justices in certain cases.

Passed October 10, 1863.

Be it enacted by the Legislature of West Virginia:

1. Every execution issued by a justice, which, according to the ninth section of chapter one hundred and fifty of the code of Virginia, second edition, should be returned by the constable to the clerk's office of the court by which he was appointed, shall be returned by the constable to the clerk's office of the circuit court of the county. Executions of justices returnable to circuit clerk.

2. The clerk of the circuit court shall docket all executions hereafter returned by a constable as aforesaid, and index the same in the name of both plaintiff and defendant, and file them alphabetically in a separate bundle for each year; for which service the clerk shall be entitled to a fee, to be paid by the plaintiff in each case, of twenty cents. Such further executions may be issued for the recovery of the amount due on any execution so returned, as if the judgment had been rendered in the circuit court. The same may, at the option of the plaintiff, be directed to and executed by a constable or sheriff; and the same proceedings shall be had as upon executions issued upon judgments of the circuit courts. How disposed of by him. His fee. New executions. How proceeded on.

New executions on those already returned.

3. And where executions issued by a justice have been heretofore returned to the clerk's office of a county court, the clerk of the circuit court may issue further executions thereon to be directed and executed, and have the same effect, as the executions to be issued by him under the provisions of the preceding section.

Clerk to issue executions on judgments of justices.

4. Where a judgment for a fine has been or shall be rendered by a justice and returned, pursuant to the sixth section of chapter forty-three of the code of Virginia, second edition, to the clerk's office of a county court or a circuit court, the clerk of the circuit court may issue executions thereon.

Proviso.

5. Nothing herein contained shall be construed to authorize any execution to be issued in contravention of the act of the general assembly of Virginia, passed January thirtieth, eighteen hundred and sixty-three, entitled "an act staying the collection of certain debts."

CHAP. 66.—An ACT to repeal certain provisions of the Code of Virginia concerning Slaves and Free Negroes.

Passed October 12, 1863.

Be it enacted by the Legislature of West Virginia:

The seventh and eighth sections of chapter one hundred and four, the sixth, seventh, eighth, ninth, tenth, eleventh, twelfth, thirteenth, fourteenth, fifteenth, sixteenth, eighteenth, nineteenth, twentieth, twenty-first, twenty-second, twenty-third and twenty-fourth sections of chapter one hundred and five, and the twenty-sixth, thirty-third, thirty-fourth, thirty-fifth, thirty-sixth and thirty-seventh sections of chapter one hundred and ninety-eight of the code of Virginia, edition of eighteen hundred and sixty, are hereby repealed.

CHAP. 67.—An ACT fixing the pay of the Sergeant-at-Arms of the Senate.

Passed October 12, 1863.

Be it enacted by the Legislature of West Virginia:

Three dollars per diem.

The sergeant-at-arms of the senate shall, during the session of that body, receive three dollars per day.

CHAP. 68.—An ACT to remove the Seat of Justice of Hampshire county temporarily to Piedmont.

Passed October 13, 1863.

Be it enacted by the Legislature of West Virginia:

Seat of justice transferred.

Authority of the governor to re-establish.

1. The circuit court of Hampshire county shall be held, and the recorder's office of the said county, be kept, in the town of Piedmont instead of Romney, until the governor, by his proclamation, shall direct the same to be removed to the said town of Romney.

2. The records, books and papers pertaining to the said court and recorder's office shall be removed to the said town of Piedmont, as speedily as may be practicable, and be retained there in the care and custody of the proper officers, until the governor, by proclamation, direct the same to be returned to and kept at the said town of Romney.

Records, &c., to be transferred.

To be returned on order of the governor.

CHAP. 69.—An ACT to authorize the Suspension of Specie Payments till March first, eighteen hundred and sixty-five.

Passed October 14, 1863.

Be it enacted by the Legislature of West Virginia:

1. So much of any law as may subject any bank of circulation now in operation in this state to the forfeiture of its charter, or to any other penalty, for failing or refusing to redeem its notes or debts in specie, shall be and the same is hereby suspended until the first day of March, eighteen hundred and sixty-five.

Laws subjecting to penalties banks failing to redeem their circulation in specie suspended. Till Mar. 1, 1865.

2. The twenty-seventh, twenty-eighth, twenty-ninth, thirtieth, thirty-first and thirty-second sections of chapter fifty-eight of the code of Virginia, second edition, and the several statutory provisions incorporated therein, are hereby repealed.

Laws repealed.

CHAP. 70.—An ACT to authorize Suits to be brought in the county of Kanawha, Lewis, Doddridge, or Jackson, in cases heretofore cognizable in certain other counties.

Passed October 15, 1863.

Be it enacted by the Legislature of West Virginia:

Any action at law or suit in equity, which, according to the one hundred and sixty-ninth chapter of the code of Virginia, second edition, might be brought in the county of Boone, Clay, Fayette, Greenbrier, Logan, McDowell, Mercer, Monroe, Nicholas, Raleigh or Wyoming, may be hereafter brought in the county of Kanawha; and any action or suit which might, according to the said chapter, be brought in the county of Pocahontas or Webster, may be hereafter brought in the county of Lewis; and any action or suit which might, according to said chapter, be brought in the county of Gilmer, may be hereafter brought in the county of Doddridge; and any action or suit which might, according to the said chapter, be brought in the county of Roane, may be hereafter brought in the county of Jackson; but nothing herein contained shall be construed to effect any provision of law for the limitation of actions or suits.

Suits heretofore cognizable in certain counties may be brought in certain other counties.

Proviso.

CHAP. 71.—An ACT to legalize Books of Commissioners of the Revenue not properly certified.

Passed October 15, 1863.

Be it enacted by the Legislature of West Virginia:

All books of commissioners of the revenue examined and certified by any person as clerk or deputy clerk of the court of any county since the nineteenth day of June, eighteen hundred and sixty-three, shall

Books certified by county clerk since June 19,'63.

Or by recorder before July 28,'63.

be as valid as if so examined and certified by such person on or before the said nineteenth day of June, eighteen hundred and sixty-three; and all books of commissioners of the revenue examined and certified by the recorder of any county before the twenty-eighth day of July, eighteen hundred and sixty-three, shall be as valid as if examined and certified by such recorder on or since the said twenty-eighth day of July, eighteen hundred and sixty-three.

Made valid.

CHAP. 72.—An ACT authorizing Merchants' Licenses to be transferred.

Passed October 16, 1863.

Be it enacted by the Legislature of West Virginia:

When a merchant removes, not without county, recorder to alter license.

1. When a person who has heretofore obtained a license, or paid a tax for a license, to sell goods or merchandise at one place or store, removes to another store or place in the county where such license was obtained, and wishes his license altered accordingly, the recorder of the county may authorize such alteration.

When a merchant sells out to another within county, recorder to transfer license.

2. When a person who has heretofore obtained a license, or paid a tax for a license, to sell goods or merchandise, and has sold his goods or merchandise to another person, and wishes to transfer his license to the person to whom he sold his goods or merchandise, the recorder of the county is authorized to make such alteration or transfer, provided the goods be sold in the county where the license was obtained.

CHAP. 73.—An ACT to alter the terms of the Circuit Courts and the Rules, in the First Circuit, after the year eighteen hundred and sixty-three.

Passed October 17, 1863.

Be it enacted by the Legislature of West Virginia:

Terms of circuit courts in first circuit changed.

1. The commencement of the terms of the circuit courts in the several counties of the first circuit, after the thirty-first day of December, in the year eighteen hundred and sixty-three, instead of being as heretofore prescribed by law, shall be as follows: For the county of Ohio, on the first Tuesday of March, May, October and December; for the county of Marshall, on the first Tuesday of April, June, September and November; for the county of Hancock, on the third Tuesday of April, June, September and November; and for the county of Brooke, on the fourth Tuesday of April, the first Tuesday of July, and the fourth Tuesday of September and November.

Times of holding rules in clerk's offices of first circuit changed.

2. After the end of the present year, rules shall be held in the clerks' offices of the said circuit courts, as follows, instead of at the times heretofore prescribed by law: For the counties of Ohio and Marshall, on the last Tuesday of every month; for the county of Hancock, on the second Tuesday of every month, and for the county of Brooke, on the third Tuesday of every month; and the said rules may continue three days.

3. Special terms may be appointed and held in any county of the said circuit pursuant to the twenty-ninth, thirty-first, thirty-second and thirty-third sections of chapter one hundred and fifty-eight of the code of Virginia, second edition. Special terms provided for.

CHAP. 74.—An ACT to provide for the appointment of Collectors in Counties where there are no Sheriffs.

Passed October 19, 1863.

Be it enacted by the Legislature of West Virginia:

1. The auditor, with the approbation of the governor, may appoint a collector or collectors of the revenue in any county that has no sheriff, and shall allow him a reasonable compensation, to be agreed on before the service is commenced, which compensation shall not exceed twenty per centum on what may be collected and paid into the public treasury. Auditor to appoint collectors. Their compensation.

2. Such collector shall have a reasonable time allowed him by the auditor, and shall, before he acts, execute a bond approved by said auditor, conditioned that he will faithfully collect the revenue, levies, fines and fees in the county for which he is appointed, and account for and pay the same according to law. The said bond shall be filed in the auditor's office. Time allowed them, their duties and bond.

3. Any action or motion against said collector or his sureties, may be instituted or made at the instance of the auditor in the circuit court of Ohio county, or of the county wherein the seat of government may be, after thirty days notice in the case of such motion, or in the circuit court of the county in which he is appointed, by any party aggrieved. Suits against collectors or sureties. How and where instituted.

4. Every collector shall give information to the auditor of any violation of duty by any assessor of the revenue of his county. Collectors to report delinquencies of assessors.

5. Such collector shall have the same power to collect, and appoint deputies to collect, taxes, levies, fines, or officer's fees, and distrain and sell therefor, and be charged with the same duties in respect thereto that the sheriff would have been charged with; and the deputy collectors shall have the same power and duties in relation thereto, and for the same length of time that the collector himself has; and defaults and misfeasances of the deputy collectors shall be as much a breach of the condition of the collector's bonds, and of the bonds of such deputies, as defaults of the deputies of a sheriff would have been a breach of the condition of the bond of the sheriff, and of the bonds of his deputies. Collector to appoint deputies. Powers and duties of deputies. Defaults and misfeasances of same.

CHAP. 75.—An ACT to incorporate the Marion and Monongalia Navigation Company.

Passed October 19, 1863.

Be it enacted by the Legislature of West Virginia:

1. It shall be lawful to open books under the direction of George W. Jolliff, James O. Watson, John Kearsley, Jacob C. Beeson, and Names of corporators.

Ashel Harr, or any three of them, at Fairmont, in the county of Marion, and at Morgantown, in the county of Monongalia, under the direction of Henry Dering, David H. Chadwick, Alfred Yeager, Samuel Sears, and George M. Hagans, or any three of them, for receiving subscriptions in shares of twenty dollars each, to an amount not exceeding two hundred thousand dollars, to the capital stock of the Marion and Monongalia Navigation Company, for the purpose of improving the Monongahela river by slack water from the Pennsylvania line upwards to the town of Fairmont, in Marion county.

Value of shares.

Capital stock.

Object of company.

2. As soon as one thousand shares have been subscribed, the subscribers, their executors, administrators, representatives, and assigns shall be and are hereby incorporated into a company by the name and style of the Marion and Monongalia Navigation Company, with all the rights, privileges and immunities and subject to the responsibilities, of a body politic or corporation; and may make such by-laws, rules and regulations as they may deem necessary and advisable, not inconsistent with the constitution of the United States or this State.

Company established on subscription of one thousand shares.

Powers, &c., of company.

3. The said company shall be governed by the provisions of the fifty-sixth, fifty-seventh, and sixty-first chapters of the code of Virginia, second edition, so far as the same are applicable and not inconsistent with this act. At all general meetings and elections, each stockholder may, in person or by proxy, cast one vote for every share of stock owned by him.

How governed.

How stockholders shall vote.

4. The towns of Fairmont and Morgantown, and the counties of Marion and Monongalia, the Monongahela Navigation Company, and the Baltimore and Ohio Railroad Company, in their corporate capacities, are hereby authorized to subscribe to the stock of the Marion and Monongalia Navigation Company; and the said towns of Fairmont and Morgantown, and the counties of Marion and Monongalia, are hereby authorized to issue their bonds to obtain money for the payment of their stock, redeemable at a period not exceeding twenty years, and at a rate of interest not exceeding six per cent. per annum.

Certain towns, counties and companies authorized to subscribe.

And the towns and counties to issue bonds for payment of subscription.

5. Said company shall have power to borrow money from time to time, not exceeding in the aggregate the amount of their capital stock, to issue their bonds or other proper securities for the same, and to pledge their works and property by mortgage or deed of trust for the payment thereof and the interest accruing thereon.

Company authorized to borrow money, and issue bonds for same.

6. Said company may commence and place under contract a lock and dam whenever a sufficient amount of stock has been subscribed and secured to complete the same; and as additional stock is subscribed and secured sufficient to complete another lock and dam, the same shall be placed under contract, and thus continue from time to time till the whole work is completed.

When to commence operations.

And how to continue.

7. As soon as a lock and dam are completed and placed in working order, said company may receive tolls, to be regulated so as not to exceed per mile the rate of tolls collected by the Monongahela Navigation Company, on the said river, in the state of Pennsylvania; but

When tolls may be collected.

Rates of same.

no tolls shall be collected on any craft or lumber going down said river from above the slack water not to return, until all the locks and dams are completed and in working order to Fairmont.

Exception as to collection of tolls.

CHAP. 76.—An ACT giving force and effect within this state to sundry provisions of the second edition of the Code and other laws of the State of Virginia.

Passed October 19, 1863.

Be it enacted by the Legislature of West Virginia:

County or corporation court construed to mean circuit court.

1. Wherever the words "court of the county," or "county court," or "court of the county or corporation," or any other expression used to designate the court of a county or corporation, occur in any provision of the Code of Virginia, second edition, or in the laws of that state passed before the seventeenth day of April, eighteen hundred and sixty one, or under the reorganized government thereof, the same shall be construed as if the circuit court of the county were thereby intended; and such provision, if not otherwise repugnant to the constitution of this state, or the acts of the Legislature thereof, shall be and continue in force as laws of this state; but no provision of the said Code or laws of Virginia which has been repealed shall be revived or continued in force by reason of anything herein contained.

Functions of county clerk transferred to circuit and supervisors' clerks.

2. All the powers and duties conferred on or required of the clerks of county courts by any chapter or section of the said Code or laws, and not by the constitution or laws of this State conferred on or required of the recorders, justices or other officers or organizations thereof, are hereby, if they relate to the proper business of a court of justice, conferred on and required of the clerks of the circuit courts, and if they do not so relate, on the clerks of the boards of supervisors subject to the same privileges, restrictions and penalties.

Laws relating to fees confirmed.

3. The provisions of the said Code and laws relating to the fees which the state and county officers therein mentioned are thereby allowed to charge, recover or receive for acts done and services rendered, unless the same are repugnant to the constitution, or have been altered or repealed by the laws of this state, are hereby declared in force in this state until the same are altered or repealed by law; and the state, county, and township officers thereof are hereby respectively authorized to charge, recover and receive the like fees for similar acts done and services rendered by them in their official capacities.

CHAP. 77.—An ACT making an Appropriation to defray the expense of removing Sick and Wounded Soldiers.

Passed October 21, 1863.

Be it enacted by the Legislature of West Virginia:

$2,000 appropriated.

1. The sum of two thousand dollars is hereby appropriated out of the treasury of this state, to defray the expense of removing to their homes from the hospitals or battle-fields the sick and wounded sol-

For transportation of disabled soldiers of the state. In what case. diers belonging to the military forces from West Virginia in the service of the United States, where the soldiers themselves, or their friends, are unable to pay the expense of such transportation.

And subject to disposal of Governor. 2. This appropriation shall be subject to the disposal of the governor of this state.

CHAP. 78.—An ACT defining, in part, the Powers and Duties of the several Counties of the State.

Passed October 21, 1863.

Be it enacted by the Legislature of West Virginia:

County a body politic and corporate. 1. Every county of the state is a body politic and corporate; and all the powers, duties, rights, privileges and immunities which appertained thereto on the nineteenth day of June, in the year one thousand eight hundred and sixty-three, and are not repugnant to any provision of the constitution, or inconsistent with this act, shall remain and continue until altered by law. Style of proceedings concerning. All acts and proceedings of, concerning or against a county shall be in the name of "The supervisors of the county of ———;" Powers of. by which name it shall have perpetual succession, may sue and be sued, make and use a common seal, purchase and otherwise acquire, hold, sell and convey real and personal estate, make and execute contracts, and do all other necessary acts and things in relation to its property and all other concerns, and exercise and discharge such powers and duties as now are, or may hereafter be, conferred upon it, or legally required of it.

Property how conveyed to. 2. All real and personal estate heretofore conveyed, or which shall hereafter be conveyed, by any form of conveyance, to any county, or the inhabitants thereof, or to any person or persons for the use and benefit of such county or its inhabitants, shall be deemed to be the property of such county; and all such conveyances shall have the same force and effect as if they had been made to the inhabitants of such county by their corporate name.

Powers of, exercised only by assessors. 3. The powers of a county, as a body politic and corporate, can be exercised only by the supervisors thereof, acting as a board, or by virtue of their delegation or appointment. All property owned on the said nineteenth day of June, or thereafter acquired, by any county, Property vested in same. shall be and remain vested in the supervisors thereof, for the use of such county and its inhabitants. The supervisors shall, under such general regulations as may be from time to time prescribed by law, have the care and disposition of the property, and the superintendence and adminstration of all the internal affairs and fiscal concerns of their Administrative powers of supervisors. county not by law confided to any township therein.

Suits concerning county. Effect of judgment. 4. In all suits in which a county shall be a party, the proceedings shall be the same and the judgment therein shall have the same effect as in suits between individuals; but where the judgment is against a If against county. No execution to issue. county in its corporate name, or against any county officer as such, and the same is payable from the county treasury, no execution shall issue thereon, except as hereinafter provided: but such judgment, unless an appeal be allowed therefrom by a competent tribunal, shall be payable and paid from the county treasury, in the same manner, and at the same time, as if it had been allowed and directed to be paid by the board of supervisors at the date of the rendition of such judgment; and if not so paid, the court which rendered final judgment may direct execution to issue as in other cases.

Unless on failure to pay judgment.

5. No suit shall be brought against a county, or against any officer thereof in his official capacity, upon a money demand or claim for damages, which, if valid, would be payable from the county treasury, unless the same be a legal order upon such treasury, until the demand or claim has been first presented to the board of supervisors for payment, and has been disallowed by them in whole or in part. If the board shall refuse or neglect to act upon any such demand or claim, duly and properly presented to them for allowance and payment, by the close of their first stated meeting after that at which the same is so presented, the claimant may institute a suit for the recovery of the same.

No suits to be brought against county.

Till claim has been presented to and disallowed by supervisors; but may be instituted if supervisors do not act on claim.

6. In all suits and proceedings against a county, the service of process shall be by leaving a copy thereof with the clerk of the board of supervisors; but in case there be no clerk, then by leaving a copy with the president or any member of the board. When any suit or proceeding is instituted against a county, the clerk of the board shall immediately notify the prosecuting attorney for his county thereof; or if there be no clerk acting, the president of the board shall give such notice. On the trial of every action or suit in which a county is interested, the inhabitants thereof, if otherwise competent, may be witnesses and jurors.

Service of process.

Prosecuting attorney to be notified.

Inhabitants of county may be witnesses or jurors.

7. Every county shall, at its own expense, provide a suitable court house, and a suitable and sufficient jail, together with convenient offices for the recorder and clerks of the circuit court and the board of supervisors thereof; and shall keep the same in constant and adequate repair, and supplied with the necessary furniture, books, stationery, fuel, and such other things as shall be necessary. The said offices shall be at the county seat, and shall be made fire proof, or be furnished with sufficient fire-proof vaults or safes. The board may also provide other necessary offices and buildings; and may, by purchase acquire so much land as may be requisite or desirable for county purposes, and may suitably inclose, improve or embellish the land so or otherwise acquired.

County buildings, how provided.

Clerks' and recorders' offices.

Land for county purposes.

8. If it becomes necessary or desirable to remove the county seat of any county to any other place within the same, and such removal is deemed advisable by a majority of the board of supervisors of such county, and is approved by a majority of at least three-fifths of the voters thereof voting "for removal," and "against removal," at the next annual township elections for the said county, or at intermediate special elections appointed by said board to be held in each township thereof, not less than thirty days after such appointment, the land, with the buildings thereon theretofore used for county purposes, may

Removal of county seat.

Sale of lands and buildings.

be sold, and the proceeds applied, so far as may be necessary, to the acquisition of the necessary land at the place to which it has been determined to remove, and the erection of other buildings thereon. Such removal and the sale may be had, notwithstanding the land formerly occupied may have been donated or sold to the county for the purposes for which it has been used, unless the grant thereof contain an express clause to the effect that on the removal of the buildings or of the county seat, such land shall revert to the former owners or their heirs, in which case it shall so revert.

Purchase of others.

Reversion of donated lands.

9. Any county may subscribe to the capital stock of any joint stock company incorporated to construct a work of internal improvement, through, by or near such county, if a majority of the board of supervisors thereof are of opinion that such subscription is likely to be of general benefit to such county, and is otherwise advisable, and the proposed subscription is approved by a majority of at least three-fifths of the voters thereof voting "for subscription" and "against subscription," at the annual township election for the said county, or at intermediate special elections appointed by the said board to be held in each township thereof, not less than thirty days after such appointment. But no such subscription shall be for a sum greater than can be paid by a levy on the taxable property of the said county for five successive years, not exceeding twenty cents on the hundred dollars value thereof in any one year; nor shall any such subscription exceed in amount one sixth of the whole capital stock proposed to be raised, or be binding on the county, or be paid in whole or in part, until the residue of such stock is, in good faith, subscribed for by other counties and responsible persons or corporations. The stock so subscribed for shall vest in the county making the subscription, and the supervisors thereof may, from time to time, appoint a proxy to represent the same at all meetings of the stockholders, and all elections of officers of the said company, and an agent to collect the dividends on such stock, which shall be paid into the county treasury, and be exclusively applied to the payment of the debts or the diminution of the annual levy thereof.

County authorized to take stock in internal improvement companies.

Conditions.

But subscription limited.

Stock to vest in county.

Representation of same.

Dividends.

10. Any turnpike or plank road company may, with the consent of three-fourths in interest of its stockholders, other than the state, and the consent of the legislature if the state is a stockholder, transfer so much of its road and works as lies in any county to such county, if the board of supervisors thereof are willing to, and shall formally accept such transfer, upon condition that their county shall thereafter keep the portion of the road so transferred, and its bridges and other works, in such order as is or may be required by law. Upon the completion of such transfer, the board may elect and provide by ordinance, either to maintain such road and works by the imposition of reasonable tolls, or in the manner in which other county roads and bridges are or shall be worked and kept in repair.

Roads may be transferred to county.

Conditions.

How same to be maintained.

11. All the police and administrative powers of the former county courts, not vested in the township or municipal corporations, including the establishment, regulation, alteration and vacation of county roads, the re-establishment and regulation of public landings, ferries

Powers of county courts conferred on supervisors.

How exercised.

and mills, and the granting of ordinary and other licenses, are hereby vested in the boards of supervisors of the several counties of the state, and shall be exercised and administered by them under the laws relating thereto, not repugnant to the constitution or inconsistent with this act, which were in force on the said nineteenth day of June, until the same are altered or amended.

Procurement of lands for public purposes.

In case of disagreement upon terms of purchase.

Appraisers to be appointed and how.

If in the establishment of a road, ferry, landing or mill, or in any other proceeding of the said board, it is authorized by law and becomes necessary or desirable to procure land, and terms of purchase cannot be agreed upon, the board of supervisors, if it is required for a public purpose, or the parties interested, in all other cases, may apply to the circuit court of the county wherein such land or the greater part thereof is situated, to appoint commissioners according to the provisions of the sixth section of the fifty-sixth chapter of the code of Virginia, second edition, or of the seventeenth section of the same chapter, unless commissioners have been previously appointed under the provisions of the latter.

Their proceedings, how regulated.

In either case the subsequent proceedings shall be conformed to the directions contained in the said chapter so far as applicable, and the words "court," or "county court," shall be construed to mean the circuit court to which such application shall be made.

Alteration of township lines.

12. The supervisors of a county, upon the petition of twenty voters resident in any township thereof, or upon the application of a township meeting held therein, and not otherwise, shall have power to alter the boundaries of such township if they shall deem it advisable; but no such alteration shall take effect until the same is approved and ratified by a majority of the voters of each township interested, assembled in an annual or special meeting thereof, and upon the like petition or application from each township to be affected thereby, and not otherwise;

Erection of new townships.

the supervisors of the county may erect a new township out of the territory of one or more townships, if they shall deem it advisable, to take effect only when approved and ratified as aforesaid.

Maps to be made by surveyors.

How disposed of.

In the event of the alteration of the boundaries of any township by the erection of a new township, or otherwise, the surveyor of the county shall make two correct maps or plats of the township affected thereby, on which the new lines shall be plainly delineated, and duplicate specific descriptions of such lines; one of each of which he shall transmit to the secretary of the state and deposit the others in the recorder's office of his county.

Certified copies of same to be evidence.

Copies of such maps or plats and descriptions, and of the original maps or plats and descriptions, of the several counties and townships of the state, certified by the secretary of the state or recorder of the proper county, shall be received as evidence of their contents in all the courts of the state.

Surveyor's fees.

The surveyor's fees and charges for his services herein shall be audited by the board of supervisors, in like manner as other claims, and be paid from the county treasury.

Change of places for holding meetings or elections.

And names of townships.

The supervisors shall also, upon the like petition or application, have power to change the place for holding the meetings, and the place or places for holding elections in the several townships of their county, and to alter the name of a township, if they deem such change or alteration advisable; and it shall be the

Secretary of the state to be notified.

duty of their clerk, as soon as practicable after any such change or alteration is made, to notify the secretary of the state thereof.

Removal of officers.

Causes for removal.

Proviso.

13. All county officers whose election is provided for by the constitution or by law, and the incumbents of all county offices hereafter created, may be removed from office for cause, by the board of supervisors of their county, excepting the sheriff, the prosecuting attorney, and the clerk of the circuit court, who may be removed for cause by the said court. Misconduct in office, habitual or wilful neglect of duty, manifest incompetence for its proper discharge, removal from the county, conviction of any offense punishable by imprisonment or involving a violation of an official oath, omission or refusal to take the oath of office, or to execute and deliver, or to renew, when required, an official bond within the time prescribed, habitual intemperance and grossly immoral conduct, shall be deemed sufficient causes of removal; but no removal shall be made by the board of supervisors unless voted for by two-thirds of the whole number elected, nor then if the assigned cause is misconduct in office or neglect of duty, until an opportunity has been afforded to the incumbent to make his defense before the board, or before a committee thereof appointed to investigate the charge or charges against him, who shall report all the facts of the case to the board.

Bounties for destruction of noxious animals and weeds.

Removal of nuisances.

Precautions against contagious diseases.

And certain animals.

14. The board of supervisors of every county shall have power to offer and pay suitable bounties and compensation for the destruction of noxious animals and weeds within their county, and by ordinance or resolution to require or direct the abatement or removal of all nuisances, dangerous or deleterious to the health of any of the inhabitants of their county. They shall also have power to take such measures to prevent the spread of contagious or infectious diseases within their county as are usual in such cases. To prevent injury from rabid animals or animals suffering from contagious or infectious diseases, they may, in like manner, direct such animals to be removed to or confined in an appointed place, or to be put to death and their carcasses properly buried or destroyed.

Supervisors authorized to impose tax on dogs.

Who is 'owner' of a dog.

Assessor to list dogs.

Penalty for concealment of dogs.

Owners of dogs to give information under oath.

15. To prevent the destruction or injury of sheep by dogs, the board of supervisors may require every owner of a dog or dogs kept within their county to take out license for keeping the same therein, and to pay such fee therefor, as they may from time to time ordain; and the owner or occupier of any house, lot, or farm about or upon which any dog or dogs may be kept or permitted to remain, shall be deemed for the purpose of this act the owner of such dog or dogs. When the board of supervisors shall have determined to require license from the owner of dogs within their county, it shall be the duty of the assessor of such county, under such regulations as the board may prescribe, to list all dogs in his county, and make return of such list at such time as the board may designate; which list shall have the names of the owners arranged in alphabetical order. If any person shall conceal his dog or send him away, to avoid listing, he shall pay a fine of five dollars, recoverable with costs before any justice. Every person when called upon by the assessor authorized to list as aforesaid,

shall disclose on oath the number of dogs owned by him, or kept or permitted to remain about any house or upon any lot or farm in his occupancy or under his control; and such oath shall be administered by the assessor. When the list aforesaid is completed and returned, the clerk of the board of supervisors shall thereupon cause notice to be posted in at least three public places in each township, requiring the owners of dogs within the county to procure license for keeping the same, within thirty days of the date of such notice; and when the said thirty days have expired, the clerk of the board of supervisors shall make out lists containing the names of all persons failing to take out license agreeably to such notice; which lists he shall deliver to the constables of the several townships, who shall thereupon search out and kill every dog for which license has not been taken out. Any person who shall conceal a dog to prevent his being killed by the constable shall pay a fine of five dollars. Constables shall receive fifty cents for every dog they shall kill under the provisions of this act. The license fees shall be paid to the county, and shall constitute a fund out of which shall be paid to the owner of any sheep injured or destroyed by dogs the value of those so destroyed or compensation for such injury, on his producing to the clerk of the board of supervisors an appraisement by two disinterested freeholders of the county, they being first duly sworn for the purpose, of the value of the sheep destroyed or the injury done, and their certificate of their belief that such destruction or injury was caused by dogs; also the constable's fees for killing dogs not licensed. If the fund prove insufficient, or more than sufficient, to pay the orders drawn against it in any one fiscal year, the license fee for the next year shall be increased or diminished accordingly, as the board may direct; but in any year when the fund shall not be sufficient to pay the full amount of the orders drawn against it, persons having legal claims for the injury or destruction of sheep against the fund for such year shall receive a share thereof in proportion to the loss or injury each has sustained. All dogs that are known to worry or kill sheep may be shot, or otherwise put to death, by any officer or resident of the county.

Assessor's list to whom returned.

Notices to owners to procure license.

Lists of those failing so to do.

Delivered to constables; who to kill dogs not licensed.

Penalty for concealment of dogs.

Constable's fees.

License fund to make restitution for loss of sheep by dogs.

How loss ascertained.

Constable's fees paid from fund.

Regulation of license.

Where fund insufficient, claims paid PRO RATA.

By whom sheep dogs may be killed.

CHAP. 79.—An ACT authorizing the Council of the town of Parkersburg to turn Pond Run into the Ohio River without the corporate limits of the said town.

Passed October 21, 1863.

Be it enacted by the Legislature of West Virginia:

1. The council of the town of Parkersburg are hereby authorized and empowered to cause the channel or bed of Pond Run, in the county of Wood, to be so changed as to discharge the water thereof into the Ohio river, at such point or place, without the present corporate limits of the said town, as they shall determine, and for that purpose to cause to be constructed such dams, embankments, canals and aqueducts as they may deem expedient.

Parkersburg council authorized to turn Pond Run into the Ohio river.

And to construct necessary works.

Arbitration respecting lands in case of disagreement.

2. If the council of the said town cannot agree on the terms of purchase with those entitled to lands wanted for the purposes of this act, five disinterested freeholders shall be appointed by the circuit court of the said county, any three of whom may act, for the purpose of ascertaining a just compensation for such lands.

Notice to be given of appointm't of arbitrators.

3. Where it is intended to apply for such appointment, ten days previous notice thereof shall be served on the tenant of the freehold, or his guardian or committee. But if there be no such tenant, guardian or committee within the said county, the notice, instead of being thus served, may be published once a week for four weeks in some newspaper published in the said county, and posted at the door of the court house thereof.

Appointm't and meetings of the same.

4. Upon its appearing that notice has been so given, the said court shall appoint such commissioners, and in the order appointing them shall designate the day for them to meet. Any one or more of them attending on the land may adjourn from time to time until the business shall be finished.

Proceedings conformed to sections 9, 10, 11, 12, 13, 14, 16 and 29 of chapter 56 of the Code. With certain construction of the same.

Additional authority of council.

Subject to sec. 27 of chapter 56 of the Code.

5. All other proceedings necessary in the premises shall be conformed to and in accordance with the provisions, so far as applicable, of the ninth, tenth, eleventh, twelfth, thirteenth, fourteenth, sixteenth, and twenty-ninth sections of chapter fifty-six of the Code of Virginia, second edition, substituting for the words "court of the county or corporation," wherever they occur in the said sections, the words "circuit court of the county of Wood." And the said council is hereby further authorized and empowered to enter upon any convenient lands for the purpose of obtaining therefrom wood, stone, gravel and earth to be used in the construction of the works mentioned in the first section of this act, under and subject to the provisions, so far as applicable, of the twenty-seventh section of the said chapter of the said Code.

CHAP. 80.—An ACT fixing the Compensation of certain Officers and Clerks.

Passed October 22, 1863.

Be it enacted by the Legislature of West Virginia:

Att'y general $1,000.

1. The attorney general shall be paid the annual salary of one thousand dollars.

Adj't general $1,200.

The adjutant general shall be paid the annual salary of twelve hundred dollars.

Vaccine ag't $100.

The agent of the state for the distribution of vaccine matter shall be paid one hundred dollars annually for his services.

Adj't general's clerk, $600.

Auditor's clerk $600.

The clerk in the adjutant general's office shall be paid six hundred dollars annually; and the clerk in the auditor's office shall be paid six hundred dollars annually.

Treasurer's clerk $200.

And there shall be allowed for the services of a clerk in the treasurer's office a contingent fund of two hundred dollars.

The compensation mentioned shall be paid quarterly from the treasury, and the several officers shall discharge their several duties as the law prescribes. Paid quarterly.

2. All acts coming within the purview of this act are hereby repealed. Law repealed.

CHAP. 81.—An ACT concerning motions against Officers and their Deputies.

Passed October 23, 1863.

Be it enacted by the Legislature of West Virginia:

Motions against officers.

1. If any officer or his deputy shall make such return upon any order, warrant or process, as entitles any person to recover money from such officer by action, the court to which, or the clerk's office of which such return is made, may, on a motion on behalf of such person, give judgment against such officer and his sureties, and against his and their personal representatives, for so much principal and interest as would at the time such return ought to have been made be recoverable by such action, with lawful interest thereon from that time until payment; and such damages in addition thereto, not exceeding ten per centum per annum, from that time till payment, as the court may deem proper. Where such return is by a deputy, there may also be a like motion and judgment against such deputy and his sureties, and against his and their personal representatives.

Amount recoverable.

2. The fortieth section of chapter forty-nine of the code of Virginia, second edition, is hereby repealed.

CHAP. 82.—An ACT to prescribe how notice shall be given of applications to the Legislature for Special Acts concerning Banks of Circulation or Internal Improvement Companies.

Passed October 24, 1863.

Be it enacted by the Legislature of West Virginia:

Notice of applications for special acts.

1. No act to incorporate any bank of circulation or internal improvement company, or to confer additional privileges on the same, shall be passed, unless public notice of the intended application for such act be given by posting the same, at least four weeks before the application is presented to the legislature, at the front door of the court house of the county where the principal office or place of business of the corporation is to be kept; and also by advertisement for four weeks successively in some newspaper, if there be any, in such county; or if there be no newspaper printed in the county, then in some newspaper printed at the seat of government. The notice shall show the names and residence of the applicants, and the nature of the act to be applied for; and with every such application there shall be submitted to the legislature proper evidence, by affidavit or otherwise, that the regulations prescribed by this act have been observed.

2. This act shall be held to apply only to such applications as shall be hereafter presented. This act not retroactive.

CHAP. 83.—An ACT providing for the formation of Corporations, and regulating the same.

Passed October 26, 1863.

Be it enacted by the legislature of West Virginia:

What corporations may be formed under this act.

1. Corporations may be formed under this act:—

I. For manufacturing, mining or insuring;

II. For savings institutions, savings banks, or banks exclusively of discount and deposit;

III. For constructing lines of magnetic telegraph, and carrying on the business properly pertaining to telegraph companies;

IV. For establishing hotels, springs companies, gas works, water works, cemeteries, or building associations, and transacting the business properly pertaining thereto;

V. For universities, colleges, academies, seminaries, schools or institutes, for the purpose of teaching any branch or branches of useful information or learning, or promoting religion, morality, military science and discipline, or the diffusion of knowledge; including library companies and literary and scientific associations;

VI. For benevolent associations, orphan, blind and lunatic asylums, and hospitals;

VII. For gymnastic associations;

VIII. And for any other purpose or business useful to the public, for which a firm or co-partnership may be lawfully formed in this state.

What corporations not to be formed under this act.

Land speculations.

2. But this act shall not be construed to authorize the incorporation of a bank of circulation, or of a company for the construction of any work of internal improvement, or of any church or religious denomination, or of any company, the object, or one of the objects of which may be to purchase lands and re-sell the same for profit.

Amount or value of each share.

3. The capital of every corporation formed under this act shall be divided, as may be agreed upon by the persons desiring to be incorporated, into shares of ten dollars each, or some multiple of that sum, or into shares of twenty-five dollars each.

Maximum capital.

4. The capital of a corporation formed under this act shall not exceed one million dollars.

Who may be incorporated.

And how charter obtained.

Corporators' agreement.

5. Any number of persons not less than five, desiring to become a corporation for any purpose or business designated in the first section, shall sign an agreement to the following effect:

"The undersigned agree to become a corporation by the name of (here insert the name by which it is intended the corporation shall be known,) for the purpose of (here describe fully and particularly the purpose for which the corporation is to be formed, and the kind of business intended to be carried on by it,) which corporation shall keep its principal office or place of business at ——, in the county of ——, and is to expire on the —— day of ——, eighteen hundred and ——. And for the purpose of forming the said corporation, we have subscribed the sum of —— dollars to the capital thereof, and have paid in, on said subscriptions, the sum of —— dollars; and desire the privilege of increasing the said capital, by sales of additional shares from time to time, to —— dollars in all. The capital so subscribed is divided into shares of —— dollars, each, which are held by the undersigned, respectively, as follows, that is to say, by (here insert the full name of each corporator, with his place of residence, and the number of shares held by him,) and the capital to be hereafter sold is to be divided into shares of the like amount. Given under our hands, this —— day of ——, eighteen hundred and ——."

Two corporations of same name not allowed.

6. No corporation to be formed under this act shall be allowed to adopt or use any name, if there be another corporation in this state having the same name.

Ten per cent. must be paid on every share.

7. No person shall be included as a corporator in any such agreement, by reason of any stock subscribed for by him, unless he has, in good faith, paid to the person who may have been appointed or agreed upon to receive the same for the intended corporation, at least ten per cent. of the par value of the said stock.

Acknowledgment of corporators' agreement.

8. The said agreement shall be acknowledged by the several corporators, before a justice, notary or judge; and such acknowledgments shall be certified by the officers before whom they are made. If any such acknowledgment be made before a justice, notary or judge of another state or country, proper evidence of the official character of the officer certifying the same, shall accompany his certificate. The affidavits of at least two of the corporators named in the agreement shall be annexed thereto, to the effect that the amount therein stated to be paid on the capital, has been in good faith paid in, for the purposes and business of the intended corporation, without any intention or understanding that the same shall be withdrawn therefrom before the expiration or dissolution of the corporation.

Affidavit of corporators.

Agreement, &c., to be delivered to the secretary of state.

9. The agreement, with the acknowledgments and affidavits aforesaid, shall be delivered to the secretary of the state, who shall thereupon issue to the said corporators, his certificate, under the great seal of the state, to the following effect:

The charter or certificate of incorporation.

"I, A. B, secretary of the state of West Virginia, hereby certify that an agreement, duly acknowledged, and accompanied by the proper affidavits, has been this day delivered to me, which agreement is in the words and figures following: (here insert it.) Wherefore the corporators named in the said agreement and who have signed the same, are hereby declared to be, from this date, until the —— day of ——, eighteen hundred and ——, a corporation by the name and for the purposes set forth in the said agreement.

Given under my hand and the great seal of the said state, at ——, this —— day of ——, eighteen hundred and ——."

Effect of such charter.

10. When a certificate of incorporation shall be issued by the secretary of the state pursuant to this act, the corporators named in the agreement recited therein, and who have signed the same, and their successors, associates and assigns, shall from the date of the said certificate until the time designated in the said agreement for the expi-

Commencement and expiration of the corporation.

ration thereof, unless sooner dissolved according to law, be a corporation by the name and for the purposes and business therein specified. And the said certificate of incorporation shall be received in all courts and places as legal evidence of the existence of the corporation, as aforesaid.

Effect of charter as evidence.

Time the corparation is to continue limited.

11. No corporation under this act, except those mentioned in clauses five, six and seven of the first section, shall continue longer than twenty years.

Existing corporations may accept this act.

Proceedings for that purpose.

Report to the secretary of the state in such case.

12. The stockholders of any corporation now existing in this state, banks of circulation and companies incorporated for the construction of works of internal improvement excepted, may by resolution in general meeting, accept the provisions of this act. And thereupon a copy of the resolution shall be filed with the secretary of the state, together with a statement showing the name by which the corporation had theretofore been known, and the name, whether it be the same or a different one, by which it is intended it should be known thereafter; the business to be carried on; the place where such business is to be carried on and where the principal office is to be kept; the time when the corporation is to expire, subject to the limitation contained in the eleventh section of this act; the amount of the whole capital, the amount of the capital paid in; the amount to which it is intended to reserve the privilege of increasing the same; and the par value of each share; which copy and statement shall be certified by the president under his hand, and the common seal of the corporation. And the secretary of the state shall thereupon issue a certificate of incorporation, under his hand and the great seal of this state, reciting the said resolution and statement, and declaring the said corporation to be thereafter, until the time mentioned in the said statement for the expiration thereof, a corporation by the name which it is intended it should thereafter bear, and for the purposes and business therein set forth, unless sooner dissolved according to law. Certificates of incorporation issued pursuant to this section shall be received in all courts and places as legal evidence of the existence of the corporation as therein declared; and the said corporations shall no longer be under their former charters, but shall have all the rights, privileges and powers conferred by this act, and shall be subject to the liabilities, restrictions and regulations herein prescribed.

How authenticated.

New charter to be issued by the secretary.

Effect of new charter.

Change of name by a corporation.

Proceedings for that purpose.

Report to secretary of the state.

Secretary's certificate of change of name.

13. If the stockholders of any corporation now existing in this state excepting banks of circulation and companies incorporated for the construction of works of internal improvement; or the stockholders of any corporation which may be formed under this act, desire to change the name thereof, and shall pass in general meeting a resolution to that effect, stating the name by which it is intended the corporation should be thereafter known, there being no other corporation of the same name in this state, the president shall thereupon, under his signature and the common seal of the corporation, certify the said resolution to the secretary of the state, and the secretary shall issue, under his hand and the great seal of this state, a certificate re-

Effect thereof.

citing the said resolution, and declaring that the corporation is to be thereafter known by the new name so adopted by the stockholders; and the said certificate shall be received in all courts and places as legal evidence of the change of name therein specified.

Existing rights or proceedings not affected.

14. No debt, contract, right or liability previously existing, or any warrant, proceeding, motion, suit or process then pending, shall be affected or impaired by anything that may be done under either of the last two sections.

Corporators' agreements, &c., where to be kept.

Record of charters, &c.

Penalty for failure to record correctly.

Charters, &c., to be printed with the acts of the legislature.

Penalty on secretary of the state and clerk of the house.

Record in recorder's office.

15. The secretary of the state shall carefully preserve in his office the agreements specified in the fifth section of this act, with the acknowledgments and affidavits accompanying the same; and also the resolutions and statements mentioned in the twelfth and thirteenth sections. He shall cause to be accurately recorded in a well-bound book, to be used for that purpose exclusively, all certificates of incorporation and certificates of change of name he may issue pursuant to this act. If he neglect to record any such certificate, or if any error be discovered in the record of any such certificate, he shall forfeit for every such neglect or default not less than ten nor more than fifty dollars. At the beginning of every regular session of the legislature, he shall deliver to the clerk of the house of delegates accurate copies of all original certificates of incorporation, and certificates of change of name not before reported by him; and it shall be the duty of the said clerk to cause the same to be printed and bound with the acts of the session. If the said secretary or clerk fail herein, the party so in default shall forfeit not less than ten nor more than fifty dollars. The corporators shall cause certificates of incorporation, and certificates of change of name to be recorded in the recorder's office of the county in which the corporation therein named transacts its business, or in which its principal office is situated.

Copies of charters, &c.

Effect thereof as evidence.

Effect of copies printed with the acts.

16. The secretary of the state may, at any time, on application of a party interested, issue under his hand and the great seal of this state, certified copies of any certificate of incorporation, or certificate of change of name, recorded in his office; and such copies, as evidence, shall have the same effect as the originals. The copies printed with the acts of the legislature, as prescribed by the preceding section, shall also, as evidence, have the same effect as the original certificates.

Fees of the secretary of the state.

17. For issuing a certificate of incorpation or change of name, or a certified copy thereof, under the great seal of this state, as aforesaid, the secretary of the state may charge a fee of two dollars; and for recording the originals, as required by the fifteenth section, a fee of fifteen cents for every hundred words; which fees shall be paid at the time the service is rendered, by the person at whose instance it is done.

General powers of the corporation.

18. Every corporation for which a certificate of incorporation shall be issued in conformity with the ninth and twelfth sections of this act, shall, until the expiration or dissolution thereof, have perpetual suc-

cession and a common seal, which it may alter and renew at pleasure. It may sue and be sued, plead and be impleaded, answer and be answered, at law or in equity. It may in any case, and in any manner in which it would be lawful for a natural person so to do, but subject to the restrictions and regulations herein contained, contract and be contracted with; purchase, acquire, hold and use real and personal estate, stocks and securities, or any interest or right therein; and grant, convey, sell, assign, lease, mortgage, convey in trust, pledge, encumber or otherwise dispose of the same. It may in general meeting of its stockholders make by-laws and regulations, not inconsistent with the laws of this state, for the government of its board of directors, officers and agents, the management of its property and business, and the due and orderly conducting of its affairs. And, generally, it may do for the purposes for which it is incorporated, and in the transaction of its proper business, but subject to the restrictions and regulations herein contained, whatever it would be lawful for a natural person to do.

Suits.

Contracts.

Acquisition, use and disposal of property.

By-laws.

General power to do unless restricted by law, whatever a natural person may do.

19. No such corporation shall employ its capital, money or effects, or otherwise engage in the purchase of real estate in order to re-sell the same for profit; or in transactions not proper for the purposes or business expressed in its certificate of incorporation. But mining or manufacturing companies may lay out a town or village, not to include over six hundred and forty acres, on lands owned by them, at or near their principal works, and sell lots therein.

Restricted from speculating in land.

Confined to the business expressed in charter.

Mining and manufacturing villages.

20. It shall not be lawful for any corporation, formed or continued under this act, to hold more real estate than is proper for the purposes for which it is incorporated. And in no case shall any such corporation hold more than one hundred acres of land, except that a company for mining iron, lead or copper ore, and manufacturing the same into metal, may hold ten thousand acres for every charcoal-blast furnace, and three thousand acres for every other furnace; other manufacturing companies, one thousand acres each; a company for mining coal for sale, three thousand acres; other mining companies, including salt and oil companies, two thousand acres each; and a springs company, fifteen hundred acres. No corporation subject to this act shall hold more than five acres of land in a city or incorporated town, except in the case specified in the nineteenth section.

What amount of real estate the corporation may hold.

General limitation.

Exceptions.

Amount of land to be held in city or town.

21. But nothing in this act contained shall prevent any corporation from taking stocks or real estate as a payment, in whole or in part, of any debt owing to it, or as security therefor; or from purchasing stocks and other property at any sale made for its own benefit; and disposing of the same at its own discretion. And if any corporation subject to this act lawfully acquire any share or shares of its own stock, it may either extinguish the same, or sell and transfer the same to a purchaser; but no vote shall be given on such stock while held by the corporation.

Real estate and stocks taken for debt.

Corporations acquiring part of its stock, how to dispose thereof.

Such stock not be voted.

22. In a meeting of the stockholders of a corporation subject to this act, and at every election of directors, every stockholder may, in per-

Scale of votes in stockholders' meeting.

son or by proxy, give the following vote on whatever stock he may hold in the same right, that is to say, one vote for every share of stock not exceeding one hundred; and one vote for every four shares exceeding one hundred. Proxy.

23. Where a vote is offered at any meeting of stockholders upon stock transferred within sixty days before such meeting, such vote shall not be counted if any stockholder present object thereto, unless the stockholder, whose vote is so objected to has made or shall make oath that the stock on which such vote is to be given is held by him in good faith, and not by virtue of a transfer made with intent to obtain more votes than is allowed by law. Vote on stock transferred within sixty days.

24. No officer or director of a corporation subject to this act shall vote as the proxy of a stockholder. No officer or director to act as proxy.

25. An annual meeting of the stockholders of every corporation subject to this act shall be held at such time and place as may be prescribed by the by-laws, or if there be no such by-laws, then on the fourth Tuesday of January. A general meeting of the stockholders may be called at any time by the board of directors, or by any number of stockholders, holding together at least one fifth of the capital. Notice of the annual or any other general meeting shall be given in such manner as the by-laws may direct, or if there be no such by-laws, by advertising the same once a week, for two weeks at least, in some newspaper of general circulation published near the principal office or place of business of the company. Annual meeting of stockholders to be held. Special meeting, how called. Notice of meetings of stockholders.

26. The number of stockholders, or amount of stock necessary to constitute a quorum at a meeting of stockholders, and the mode of transacting business at such meetings, may be prescribed by the by-laws. If there be no such by-law, a majority of the stock must be present, in person or by proxy, to constitute a meeting. But if a sufficient number do not attend at the time and place appointed, those who do attend may adjourn from time to time until a meeting is regularly constituted. Every meeting of stockholders may adjourn from time to time till its business is completed. Quorum at meeting of stockholders. Less than quorum may adjourn. Meeting may be continued by adjournments.

27. A list of the stockholders, showing the number of shares and votes to which each is entitled, shall, for one month before every annual meeting, be hung up in the most public room at the principal office or place of business of the corporation. List of stockholders to be hung up in office.

28. When any certificate of incorporation is issued under the ninth section of this act, the corporators named in the agreement recited therein, or a majority of them, shall appoint the time and place for holding a general meeting of the stockholders to elect a board of directors, make by-laws, and transact any other business which may lawfully be done by the said stockholders in general meeting. The time appointed for the meeting shall be not less than twenty-one nor more than ninety days from the date of the certificate, and at least two weeks notice of such meeting shall be given by advertisement in the manner prescribed in the twenty-fifth section. When new corporation formed, the corporators to call meeting of the stockholders. For what purpose. Time of such meeting. Notice thereof.

When a former corporation accepts this act. The directors and officers may continue in office

29. When a certificate of incorporation is issued to an existing corporation, pursuant to the twelfth section, the board of directors and officers may continue to act in their respective capacities until the next annual meeting of the stockholders, and thereafter until their successors are elected or appointed and qualified; or a general meeting of stockholders may be called in the manner prescribed in the twenty-fifth section to elect a new board, or make such order in the matter as they may deem right.

Or a new election be held, &c.

Board of directors. Their general power.

30. For every corporation subject to this act there shall be a board of directors, who shall have power to do, or cause to be done, all things that are proper to be done by the corporation. The stockholders may in general meeting, by a by-law, prescribe the number of which the board shall consist; but unless a different number be so prescribed, there shall be five directors. They may also, by by-law, prescribe the qualifications of directors; but if it be not otherwise provided, every director must be a resident of this state and a stockholder. The directors shall be elected at the annual meeting of the stockholders, or as soon thereafter as practicable, and shall hold their offices until their successors are elected and qualified. The stockholders in general meeting may remove any director and fill the vacancy; but any vacancy not caused by such removal may be filled by the board. A majority of the board shall constitute a quorum, unless it be otherwise provided in the by-laws; and if the number of the board be reduced at any time so as to interrupt the proper and efficient management of the business of the corporation, a general meeting of the stockholders may be called to elect new directors, or to take such order in the premises as they may deem proper.

Number of directors.

Qualification of.

When to be elected.

Term of office.

How removed from office. Vacancies, how filled. Quorum of the board. Filling up the numbers of the board when reduced.

The president of the corporation.

31. As soon as may be after their election, the board of directors shall choose one of their own body president of the corporation, who shall act as such till his successor is qualified, without ceasing, however, to be a member of the board. During the absence of the president the board may appoint a president *pro tempore*, who, for the time, shall discharge the official duties of the president.

His term of office. To continue as director. President PRO TEMPORE.

Meetings of the board.

32. The board shall hold meetings at such time as they see fit or the president shall require. They may by resolution prescribe when and where their regular meetings shall be held, how special meetings shall be called, and what notice of their meetings shall be given.

Minutes of board of directors.

33. They shall keep a record of all their resolutions and proceedings, which shall be verified by the signature of the president or president *pro tempore*. No member of the board shall vote on a question in which he is interested otherwise than as a stockholder, or be present at the board while the same is being considered; but if his retiring from the board in such case reduce the number present below a quorum, the question may nevertheless be decided by those who remain. On any question the names of those voting each way shall be entered on their minutes, if any member at the time require it.

No director to vote if interested or remain at the board.

Yeas and nays.

The board to appoint the officers and agents, and fix their pay.

34. The board of directors shall appoint such officers and agents of the corporation as they deem proper, and prescribe their compensa-

tion; but there shall be no compensation for services rendered by the president or any director, unless it be allowed by the stockholders. The officers and agents so appointed shall hold their places during the pleasure of the board; and if required by the board, or the by-laws, shall give bonds, payable to the corporation, in such penalties and with such conditions and security as the board may approve.

Except pay of president or a director.

Term of office of the officers.

Bonds.

35. The board of directors shall cause regular and correct books of account to be kept, and to be settled and balanced once at least every six months.

Accounts to be kept. When to be balanced.

36. They shall make a report to the stockholders, at the annual meeting, of the condition of the corporation. The report shall show the property and funds belonging to the corporation, and the estimated value thereof; the debts due to it, distinguishing such as are believed to be good from those considered doubtful or hopeless; the debts and liabilities of the corporation; the amount of capital paid in; and the estimated surplus or deficiency, as the case may be. It shall also state the amount of dividends declared, and the losses incurred or profits accruing during the preceding year.

Report to the annual meeting of stockholders.

37. The property and funds, books, correspondence and papers of the corporation, in the possession or control of any officer or agent thereof, shall at all times be subject to the inspection of the board, or a committee thereof appointed for the purpose, or of any committee appointed for the purpose by a general meeting of the stockholders. The minutes of the resolutions and proceedings of the board shall, for thirty days before the annual meeting of the stockholders, be open to the inspection of any stockholder. They shall be produced when required by the stockholders at any general meeting.

Examination by the board of the affairs of the corporation.

Or by committee of the board or stockholders.

Inspection of the minutes of the board.

Production of the minutes at stockholders' meeting.

38. The board may from time to time declare dividends of so much of the net profits as they may deem it prudent to divide. If any stockholder be indebted to the corporation, his dividend, or so much thereof as may be necessary, may be applied to the payment of the debt, if the same be then due and payable.

Dividends.

Dividend may be retained if the stockholder is indebted.

39. If the board declare a dividend by which the capital of the corporation shall be diminished, all the members present who do not dissent therefrom and cause said dissent to be entered on the minutes of the resolutions and proceedings, shall be jointly and severally liable to the creditors of the corporation for the amount the capital may have been so diminished; and may be decreed against therefor on a bill in equity filed by any creditor; and moreover every stockholder who has received any such dividend shall be liable to the creditors for the amount of capital so received by him.

The capital not to be diminished by dividends. Penalty on directors in such case.

Amount may be recovered from stockholders.

40. The stockholders may at any time in general meeting resolve to discontinue the business of the corporation, a majority of the capital stock being represented and voted in favor of such discontinuance, and may divide the funds and assets that may remain after paying all debts and liabilities thereof. Public notice of such resolution shall be immediately given by advertisement in some newspaper of general cir-

Resolution of stockholders to discontinue the corporation.

Proceedings for that purpose.

Such resolution to be reported to secretary of the state.

And printed with the acts.

Funds set apart for creditors.

Creditor's remedy if his claim be insecure.

culation published near the principal office or place of business of the corporation, for three montns at least before any dividend of the capital shall be made; and the said resolution shall be forthwith certified by the president under his hand and the common seal of the corporation to the secretary of the state, who shall preserve the same in his office, and deliver a copy to the clerk of the house of delegates to be printed and bound with the acts of the legislature. As soon as practicable after any such resolution is passed, the stockholders shall cause ample funds and assets to be set apart, either in the hands of trustees or otherwise, to secure the payment of all debts and liabilities of the corporation; and any creditor who supposes his claim not to be sufficiently secured thereby, whether such claim be then due or thereafter to become due, may on bill in chancery, and proper evidence in support thereof, obtain an injunction to prevent the distribution of the capital, and a decree against any stockholder for the amount of the capital received by him; and if necessary or proper in the case, the court may appoint a receiver to take charge of and administer the funds and assets of the said corporation.

New corporation to organize in six months after charter obtained

Any corporation suspended two years is dissolved.

41. If any corporation to which a certificate shall have been issued, under the ninth section of this act, be not organized by the election of a board of directors within six months after the date of such certificate; or if any corporation to which a certificate shall have been issued, under either the ninth or twelfth section, suspend its operations for two years continuously, it shall be thereby dissolved.

Board of directors to be controlled by the by-laws.

42. The board of directors in the exercise of all powers conferred by this act, shall be subject to such by-laws and regulations, not inconsistent with the constitution or laws of this state, as the stockholders may pass from time to time in general meeting.

Corporators of new corporation may dispose of additional stock.

43. After a certificate of incorporation is issued, pursuant to the ninth section of this act, and before a board of directors are elected and qualified, additional shares of the capital of the corporation may be disposed of, so that the *maximum* capital be not exceeded, in such manner, on such terms, at such times and places, and under the superintendence of such persons as the corporators named in the agreement recited in the certificate of incorporation, or a majority of them, may order or direct.

Sales of additional stock by the board.

44. But when there is a board of directors for any corporation to which a certificate may have been issued, under either the ninth or twelftn section, the disposal of additional shares to increase the capital, shall be subject to the order and direction of the board for the time being, so that the *maximum* capital be not exceeded.

Stock not to be sold at less than par, to increase the capital.

Stock not taken till first payment thereon is made.

45. In no case shall stock be sold or disposed of at less than par, in order to increase the capital; and no stock shall be regarded as taken, or the person subscribing therefor be considered entitled to the same, until the first instalment thereon be paid.

When an excess of stock is subscribed—how reduced to proper amount.

46. If more than the amount necessary to make up the *maximum* capital or the amount of stock to be disposed of, be at any time subscribed, the subscriptions at that time shall be reduced to the proper

amount by deducting the excess from the largest subscriptions, in such manner that no subscription shall be reduced while any one remains larger.

Instalments to be paid.

47. At least ten per cent on the par value of every share shall be paid at the time of subscription; and the residue as required by the board of directors.

Remedy to enforce payment of money collected on subscriptions.

And instalments due by stockholders.

48. If any person who has received for any corporation subject to this act, any sum of money on any share or shares subscribed to the capital thereof, shall fail to account for and pay over the same as the board of directors may require, or if any stockholder fail to pay any instalment upon his shares when required by the board, the corporation may recover from the party so in default, the principal sum due, with interest thereon at the rate of ten per cent per annum until paid, and costs, by warrant or action, according to the amount, or by motion on ten days notice in lieu of an action; or such shares may, after two weeks notice published in a newspaper of general circulation, printed near the principal office or place of business of the company, be sold at public auction for ready money, and be transferred to the purchaser or purchasers by such person as the board shall for that purpose appoint.

Sale of shares of delinquent stockholders.

Proceeds of such sale—how applied.

49. Out of the proceeds of such sale, there shall be paid the expenses thereof, and the money which ought to have been paid on the said shares, with interest thereon at the rate of ten per cent per annum until paid, and any surplus shall be paid to the delinquent stockholder.

Remedy, if sale do not produce enough, &c.

50. If there be no sale for want of bidders, or if the sale do not produce sufficient to pay the expenses and the money which ought to have been paid, with interest as aforesaid, the corporation may recover from such stockholder whatever may remain unpaid, with interest at the rate mentioned in the preceding section, and costs, by warrant, action or motion as aforesaid.

Bond and security may be required for unpaid stock.

Penalty of the bond.

How secured.

Bond, to whom payable. Condition thereof.

Remedy on such bond.

51. Any corporation subject to this act may, by by-law, require every stockholder, who shall not have paid up his stock in full, to give bond and security for the payment in such instalments, as the board of directors may require, of the residue remaining unpaid on his stock. And in such case, bond shall be given in a penalty equal to the whole par value of the stock, with one or more sureties to be approved by the board; or in lieu of personal security, it shall be secured by pledge of stocks or securities, or by deed of trust or mortgage on real estate, to the satisfaction of the board. Such bonds shall be payable to the corporation, and be conditioned for the payment at such times and in such instalments as the board of directors may require, of the residue due by such stockholder on the share or shares held by him. And if any stockholder who has given bond and security as aforesaid, fail to pay any instalment on his stock when thereto required by the board, the corporation may recover against all the obligors of the bond, or any one or more of them, the amount of such instalment, with interest thereon at the rate of ten per cent per

annum till paid, and costs, by warrant, action or motion as aforesaid; or by sale or collection of the stocks and securities pledged, or the property conveyed in trust or mortgaged as aforesaid; or the shares held by such delinquent stockholder may be sold and transferred, and the proceeds applied, and the balance, if any, then remaining unpaid be recovered, in the manner specified in the preceding three sections. If the corporation proceed in any one of the modes prescribed in this section, it shall not bar or preclude it from afterwards resorting to any other mode of collecting the residue that may remain unpaid.

Shares of delinquent may be sold.

One remedy no bar to another.

52. When bonds are taken, according to the last section, for the unpaid residue of the stock, it shall be the duty of the board of directors to examine from time to time the said bonds and the securities pertaining thereto. And if they deem any such bond or security to be insufficient or doubtful, they shall require new bond and security in lieu thereof, and so, from time to time thereafter, whenever they shall find the bond and security held by the corporation against any stockholder to be doubtful or insufficient. And the corporation may enforce payment of the bonds and securities so subsequently taken, in like manner as the former bonds and securities.

Examination of stock, bonds and securities.

New bond and securities may be required.

Remedy on such new bond.

53. If any stockholder fail to give bond or security, or to renew the same when thereto required as aforesaid, the whole residue remaining unpaid on his stock, with interest thereon at the rate of ten per cent per annum until paid, and costs, may be recovered by the corporation by warrant, action, or motion, or by sale and transfer of the stock, in the manner prescribed in the forty-eighth, forty-ninth, and fiftieth sections of this act.

Remedy against stockholder who fails to give bond or renew same.

54. The shares of every corporation subject to this act shall be deemed personal estate, and as such shall pass to the personal representative or assignee of the stockholder, and be subject to execution.

Shares declared personal property.

55. The person in whose name shares may stand on the books of a corporation shall be deemed the owner thereof, so far as the corporation is concerned.

The books of the corporation evidence of ownership.

56. No shares shall be assigned without the consent of the board of directors, until the same be fully paid up, or security be given to the satisfaction of the board, for the residue remaining unpaid. And where bond and security have been given for the unpaid residue of the stock, no assignment shall affect the validity of such bond and security or the right of the corporation to resort thereto, for enforcing payment of the said unpaid residue, until the assignee shall have given bond and security, and the same shall be accepted as satisfactory by the board.

Transfer of shares where they are not fully paid.

Transfers where bond and security have been given for balance due on stock.

57. A transfer book shall be kept by the corporation, in which its shares may be assigned, and they shall be assignable only on the said book, under such regulations, if there be any, as may have been prescribed by the by-laws of the corporation.

Transfer book.

How shares are transferable.

58. The corporation shall provide by its by-laws, for issuing, if demanded, to every person appearing on its books as owner of any

Certificates of stock.

shares of stock fully paid up, a certificate therefor, under the corporate seal, to be signed by the president, and such other officer, if any, as the by-laws may direct.

Exchange of certificates where stock is transferred.

59. The person to whom any such certificate has been issued, may, upon returning the same to the corporation, assign, either in person or by attorney, upon the transfer book, the whole number of shares mentioned in the said certificate, or any less number. The certificate returned shall be canceled and retained by the corporation, which shall thereupon, if demanded, cause a new certificate or certificates to be issued to the proper persons.

Pledge of stock by delivery of certificate and power of attorney.

Effect thereof.

60. If any person shall for valuable consideration sell, pledge, or otherwise dispose of any shares belonging to him to another, and deliver to him the certificate for such shares, with a power of attorney, authorizing the transfer of the same on the books of the corporation, the title of the former, both at law and in equity, shall vest in the latter, so far as may be necessary to effect the sale, pledge, or other disposal of the said shares, not only as between the parties themselves, but also as against the creditors of, and subsequent purchasers from the former; but subject, nevertheless, to the provisions contained in the fifty-fifth section of this act.

Proceedings where certificate of stock is lost.

61. When a person to whom a certificate has been issued alleges it to have been lost, he shall file in the office of the corporation, first, an affidavit setting forth the time, place and circumstances of the loss, to the best of his knowledge and belief; second, proof of his having advertised the same in a newspaper of general circulation, published near the principal office of the corporation, once a week for four weeks, and, third, a bond to the corporation, with one or more sufficient securities, conditioned to indemnify the corporation and all persons against any loss in consequence of a new certificate being issued in lieu of the former. And thereupon the board of directors shall cause to be issued to him, a new certificate, or a duplicate of the certificate alleged to be lost.

Examination of corporation by order of legislature.

Report to legislature.

62. Every corporation subject to this act shall exhibit its books, papers, and property to such agents or committees as the Legislature may from time to time appoint to examine the same: and when required by the Legislature, shall report thereto a full, fair and detailed exhibit of its property, liabilities and condition, verified by the oath of the president and of the secretary, or principal book-keeper.

No corporation to plead usury.

Corporate contracts not impaired by reason of usury.

63. No corporation subject to this act shall interpose the defense of usury to any warrant, action, motion, proceeding, or suit at law or in chancery. Nor shall any bond, note, debt or contract of such corporation be impaired or adjudged invalid by reason of any thing in the laws prohibiting usury.

Expiration or dissolution of corporation.

How its property disposed of in such case.

64. When any such corporation shall expire or be dissolved, or its corporate rights shall cease, its property and assets shall, under the order and direction of the board of directors then in office, or of such receiver as may be appointed for the purpose by the circuit court for

the county in which the principal office or place of business of the corporation is situated, or in which its property or some part thereof may lie, be subject to the payment of the debts and liabilities due by it, and the surplus to distribution among the stockholders, according to their respective interests. And such corporation may sue and be sued as before, and do all lawful acts for the purpose of collecting its debts, converting its property or assets into money, prosecuting its rights, enforcing its liabilities, and distributing its property and assets or the proceeds thereof, among those entitled thereto.

It may still sue and be sued on pre-existing rights.

Service of process and notices on corporations.

65. It shall be sufficient service of any warrant process or notice on a corporation subject to this act, if a copy thereof be delivered by a proper officer or person to the president of the corporation; or, in his absence, be delivered to any officer, director or agent of the corporation at its principal office or place of business; or if service cannot be made as aforesaid, the corporation may be proceeded against by order of publication.

Right to alter or amend charters reserved.

Effect of such alterations and amendments.

66. The right is reserved to the legislature to alter or amend by general laws, at its pleasure, this act or any certificate of incorporation issued under the same. But such alteration or amendment shall not affect or impair the right of the creditors of the corporation to have the property and assets thereof applied in discharge of their respective claims, or of the stockholders to have the surplus which may remain after providing for the debts and liabilities of the corporation, distributed among themselves according to their respective interests.

CHAP. 84.—An ACT to authorise the Clerk of the Supreme Court of Appeals to take orders of publication in vacation.

Passed October 26, 1863.

Be it enacted by the Legislature of West Virginia:

Order of publication in court of appeals.

In what cases to be issued.

Clerk in vacation may issue it.

What it shall contain.

1. When by the return of any officer, of process issued to answer any appeal or supersedeas now pending or which may be hereafter pending in the supreme court of appeals in this state, or when from affidavits filed with the clerk of said court, it shall appear that the appellee or defendant in any such appeal or supersedeas is a non-resident of this state, or that the names or places of residence of such parties are unknown, so that process cannot be served upon them, it shall be lawful for the clerk of said court in vacation, upon application, to take and issue, on the first Monday in any month, an order of publication against such absent or unknown parties, requiring them to appear on a certain day, to be designated in said order, then and there to answer the said appeal or supersedeas, and to have a rehearing of the whole matter therein contained.

How posted and published.

2. Such order of publication shall be entered upon the order book of the court by the clerk, and signed by him, and a certified copy of said order shall be inserted once a week for four successive weeks in some newspaper to be named therein; and a copy of said order shall be posted at the front door of the building in which said court is held;

and when it shall appear that said order of publication has been duly published and posted as aforesaid, the court may proceed to hear and decide such causes in the same manner as if the said parties had been personally served with process; provided, however, that the order of publication shall have been executed as aforesaid, at least thirty days before the day on which any such case may be called for hearing.

Effect of the order.

3. Any unknown party or other defendant who was not served with process and did not appear in the cause, may have the same reheard and any injustice in the proceedings corrected, within the time prescribed by the thirteenth section of chapter one hundred and seventy of the code of Virginia, second edition.

Right reserved to absent defendant.

CHAP. 85.—An ACT to provide for revising, collating and digesting into a Code the Statute Laws now in force in this State.

Passed October 27, 1863.

Be it enacted by the legislature of West Virginia:

1. The contract made by Edward C. Bunker, James C. McGrew and Peter G. Van Winkle, a joint committee of this legislature, acting under the authority and in pursuance of a joint resolution thereof, for and on behalf of this state, with Daniel Lamb, and providing in substance that the said Daniel Lamb shall, without unnecessary or avoidable delay, revise, collate and digest into one code, to be called the "Code of West Virginia," all the statute laws of a general nature now of force in this state, and shall prepare and report to the legislature such amendments and additional laws as he may deem necessary, with marginal notes of reference to the laws from which the different sections were compiled, and to the decisions of the court of appeals, explanatory thereof, and with a table of contents and index to the whole, and shall prepare the same for printing and superintend the printing thereof, including the correction of the proofs, which contract is subject to the conditions, directions and stipulations therein contained, for the sum of five thousand dollars, payable as therein covenanted and agreed, the same to be in full of all charges and expenses which may be incurred by the said Daniel Lamb, except as therein excepted, is hereby approved, ratified and confirmed.

Names of committee and contractor.

Provisions of contract recited.

Contract confirmed.

2. The sum of five thousand dollars is hereby appropriated out of any money in the treasury not otherwise appropriated, to be paid to said Daniel Lamb, one thousand dollars on the passage of this act, the like sum on the first day of March and on the first day of August next, the like sum whenever the said Daniel Lamb shall make his concluding report to the legislature, and the residue upon the full performance of his said contract.

Appropriation.

How contractor to be paid.

CHAP. 86.—An ACT to incorporate the Wheeling Creek and Pennsylvania Turnpike Company.

Passed October 30, 1863.

Be it enacted by the Legislature of West Virginia:

1. It shall be lawful to open books for receiving subscriptions to an amount not exceeding thirty thousand dollars, to be divided into

Subscriptions to be taken.

For what purpose. shares of fifty dollars each, for the purpose of constructing a graded turnpike road, from a point near Mrs. Lydia Cruger's, on the national road, in Ohio county, and thence along the ravine or valley of Wheeling creek, to a point on the line between the state of Pennsylvania and this state, so as to connect with a road which may be made in the said state of Pennsylvania. Where books to be opened. The books shall be opened at the storehouse of R. S. Hopkins, Elm Grove, Ohio county, under the direction of said Hopkins, Jacob Keller, Daniel Steenrod, Sherrard Clemens, Names of commissioners. R. S. Buchanan, F. Ravenscraft, Albert Davis, James Downey, Alexander Caldwell, Seth Ingraham, Joseph Sheppard, William McCreary, or any one or more of them, and at such other places and under the direction of such agents, as a majority of the above named commissioners may appoint.

Amount of subscription necessary to establish company. 2. When the sum of five thousand dollars shall have been subscribed, the subscribers, their executors, administrators, and assigns shall be incorporated into a company, by the name and style of the Style of company Wheeling Creek and Pennsylvania Turnpike Company, subject to the How governed. provisions of chapters fifty-six, fifty-seven and sixty-one of the code; but the said company shall have the privilege of making the said road or any part thereof with gravel, sand, clay or plank, as to them shall Width and grade of road. seem most expedient. Said road shall be opened not less than twenty feet or more than thirty feet in width. Its grade shall in no case Tolls. exceed four degrees; and the rates of toll shall not exceed those authorized by law to be collected on the Fairmont and Wheeling turnpike road; but toll may be collected on that portion of said road, between Mrs. Lydia Cruger's and the Ellendale farm, now belonging to said Clemens, and upon each section of five miles as the same may be completed between said point and the line of Pennsylvania.

CHAP. 87.—An ACT to dispense with the Indexes to the Journals of the Senate and House of Delegates, and with the Sketch of the Acts and Resolutions heretofore required by law.

Passed November 2, 1863.

Be it enacted by the Legislature of West Virginia:

Indexes. So much of any laws heretofore in force as requires the clerk of the senate to prepare an index to the journal of the senate, and the clerk of the house of delegates to prepare an index to the journal of the house, and at the expiration of each session a sketch or Sketch of acts. synopsis of the several acts and joint resolutions passed during the session, is hereby repealed.

CHAP. 88.—An ACT defining, in part, the powers and duties, and regulating the proceedings, of the Boards of Supervisors in the several Counties of the State.

Passed November 2, 1863.

Be it enacted by the Legislature of West Virginia:

Stated meetings. 1. The first stated meeting of the supervisors of every county shall be held at the hour of ten in the forenoon, on the twelfth day after that on which the first township elections are held therein. Their stated meetings required by the constitution shall be held at the same hour on the twelfth day after the annual township and county elections respectively, and on the twentieth day of June and December in every year. The president of the board may call special meetings when he deems it necessary or advisable, and shall do so whenever requested, in writing, by one-third of the supervisors of his county, stating the object of such meetings. Of all special meetings, and of the day for holding the same, he shall give timely notice to the clerk of the board, who shall cause each supervisor of the county to be duly notified thereof. All stated and special meetings of the board may, by a majority of those present, be adjourned and continued from day to day until the business properly before them is completed. All meetings shall be held at the court-house of the county; but may on account of danger from infectious or contagious diseases, or any other cause rendering it unsafe or inconvenient to hold them there, be temporarily held at some other suitable and convenient place within the county.

Special meetings.

Adjournments.

Where meetings held.

2. The supervisors of each county, when assembled for the transaction of business, shall constitute a board, of which a majority of the whole number elected shall be a quorum. They shall sit with open doors, and all persons may attend their meetings. The vote upon any question, when any supervisor demand it, shall be by yeas and nays; and the clerk shall enter every such vote upon the journal. They may pass by-laws and resolutions for their own government, and ordinances and resolutions for the regulation of all matters committed to their charge or administration, not inconsistent with the laws of the state; but all regulations of a permanent character, or having a continuous operation, shall be in the form of ordinances, which shall commence as follows: "Be it ordained by the supervisors of the county of ———."

Manner of conducting business.

Quorum.

Resolutions and ordinances.

Style of enactment.

3. For every day a supervisor attends a meeting of the board, he shall be entitled to receive from the county treasury such sum, not exceeding two dollars, as the board shall from time to time determine, and the president an additional sum of one dollar; but neither shall receive pay for more than twenty-five days attendance during any one year. Each supervisor shall also be allowed six cents for every mile necessarily traveled by him in going to and returning from the place of meeting for any distance traveled beyond five miles from such place; but mileage shall be paid but once for a meeting adjourned from day to day, and no other compensation shall be made for time occupied in traveling.

Compensation of supervisors.

And of president.

4. At their meeting next after the first township election, at their stated meetings in June, annually, and whenever a vacancy may occur, the board shall elect one of their number to serve as president, and in case of his absence or disability to act shall appoint a temporary president. The president shall preside at all meetings of the board, and shall have a general supervision of the affairs and property of the

Officers of the board, and their duties.

President.

county. In case of his absence or disability to act, the board shall appoint a temporary president.

Clerk.

5. At the same times the board shall appoint a clerk; who shall attend all their meetings, keep a journal in which he shall record all their proceedings, and prepare such ordinances and resolutions as they may direct. At the close of every meeting, whether stated or special, he shall read from the journal the proceedings thereof, except in cases where the meeting is adjourned from day to day, in which case the journal may be read at the opening of the adjourned meeting, and in either case the journal, if necessary, shall be corrected on the motion of any supervisor, and when approved by the board shall be signed by the presiding supervisor and countersigned by the clerk, He shall file and preserve all accounts acted upon by the board, and other papers required by law to be filed in his office. He shall deliver to any one who may demand it a certified copy of any account on file in his office, on receiving from such person five cents for every hundred words contained in such copy, or for every number of words less than one hundred. The clerk shall transact such other business pertaining to the office of clerk of the board as is herein, or may be hereafter, required by law or the board of supervisors. In addition to such fees as may be allowed him by law or ordinance, he shall receive for his public services a sum not less than fifty nor more than six hundred dollars per year, according to the population and business of the county; which sum the board shall fix by ordinance and pay quarterly from the county treasury.

Clerk's fee.

His annual compensation.

Notices and publications.

6. All notices and publications of county matters and proceedings required by law or ordinance shall be prepared and signed by the clerk. He shall also prepare and sign as many copies thereof as may be necessary, and shall cause the same to be served upon the proper persons, or if personal service is not required, to be posted conspicuously in his office or at the door thereof, and at the place for holding the annual meetings in each township, by the sheriff of his county; who shall make due return of such service on the original notice; which shall remain with the clerk. The sheriff shall be allowed for every notice duly so served or posted, and return made thereof as aforesaid, a fee of fifty cents. The supervisors of any county may, by ordinance or resolution, direct the publication in one or more newspapers printed in their county, or if none is there printed, then in some other county of the state and having general circulation in their own, of such notices or class of notices as may be indicated in such ordinance or resolution; but such publication shall not dispense with the posting, as aforesaid, of such notices. The hour at which a special meeting of the supervisors will convene shall be inserted in the notice thereof, if their president so direct; but if no hour is inserted, it shall convene at the hour of ten in the forenoon.

Fee of sheriff.

Hour of special meetings.

Ordinances how recorded.

7. All ordinances when finally passed shall be recorded by the clerk of the board in a well bound book, and attested by the president of the board; and copies thereof certified by the clerk shall be received as evidence of the contents of such ordinances in all the courts of the

Same as evidence.

state and before every justice thereof. All ordinances of a public nature shall be published by posting copies thereof, to be prepared and certified by the clerk, at the places and in like manner as notices are directed to be posted by the preceding section; and if the supervisors so direct, by inserting in one or more newspapers, in the manner therein directed; but such insertion shall not dispense with the posting of copies as aforesaid, and the omission of the posting or publication of an ordinance shall not effect the binding force or operation thereof. The books, records and accounts of the board of supervisors shall be deposited with the clerk of the board.

Publication of same.

Books, etc.

8. At the first township election the voters of each county shall elect a county treasurer, whose term of office shall be two years. He shall demand, collect and receive all monies and securities due to his county, and may sue for and recover the same for the use of the county. He shall at least once in every quarter of a year, counting from the twentieth day of June, settle with the sheriff or other collector of his county, and demand and receive from him the proceeds which shall be then collected of all taxes levied for the use of his county, and of all fines and other demands and claims thereof, previously placed in the hands of such officer for collection, to whom he shall give duplicate receipts for the sum or sums paid, one of which the sheriff or other collector shall deliver to the clerk. The compensation of the treasurer shall be fixed by the board of supervisors at a per centage on the amount of his receipts, which may be varied according to the character thereof, but shall in no case exceed five dollars on the hundred, and on collections and receipts from the sheriff or other collector of taxes shall not exceed three dollars on the hundred. He shall be the holder of all obligations and other securities for the payment of money, and of all money belonging to his county, and shall safely keep the same, and deliver and pay out none except to the orders of the president of the board of supervisors, countersigned by the clerk. At the stated meeting of the board held first after the annual township election, he shall make full report of his cash receipts, of the county orders paid by him during the past year, and of the money, securities and other county property remaining in his hands.

County treasurer—his duties.

His compensation.

9. Every person having a claim or demand against the county shall file with the clerk thereof an account or statement of the same, fully setting forth the items, and where the claim or demand is for services for which no rate or compensation is fixed by law or ordinance, the number of days occupied in such services. The clerk shall present such account or statement to the board at their first meeting thereafter, who shall after examination and consideration of the same allow the whole or such part thereof as they may deem just, or disallow the whole. If any part is allowed, the clerk, upon request of the claimant and his execution of a proper receipt for the same, shall draw an order on the treasurer for the sum allowed, in the following form, or to the same effect:

Claims against county.

Form of order on county treasurer.

No. ——. ——— County, (with the date.)

The treasurer will pay to A. B., or order, the sum of —— dollars and —— cents, allowed by ordinance (or resolution) of the board of supervisors, passed on the —— day of ——, 18— (or by law as the case may be.)

E. F., *Clerk,* C. D., *President.*

Payment of such order.

What claims may be paid without action of the board.

Amount of county orders limited.

Which order the clerk shall countersign and present to the presiding supervisor; who, if the same is correct, shall affix his signature thereto, and the clerk shall deliver it to the payee or his order. Every order so signed and countersigned and endorsed by the payee, shall be paid by the treasurer whenever the same is presented to him, at a proper time and place, if there are funds in his hands applicable to its payment; but where money is directed by law or ordinance to be paid at fixed times or intervals, as in the case of officers entitled to an annual salary, payable quarterly, the claim need not be presented to the board, but the president and clerk of the board shall make and deliver to the party entitled thereto, an order on the treasurer for the payment thereof. The aggregate of county orders issued in any one fiscal year, in discharge of any one particular class of expenditures, shall not exceed the amount levied for that purpose in the same year, and the balance in and amount due the treasury at the beginning of the year, applicable thereto.

Collection of claims by county

Payment to county treasury, how made.

10. Every person indebted to a county and desirous to discharge such indebtedness, shall, unless the claim against him has been previously placed in the hands of the sheriff or other officer for collection, procure from the clerk of such board duplicate statements of the items of such indebtedness, including interest and cost, if any has accrued or been incurred, and pay the amount to the county treasurer; who shall endorse a receipt for the amount paid on each of the said duplicates, one of which, so endorsed, shall be returned to the clerk by the person who paid the money, and the clerk shall write on the other, which such person shall retain, the words "duplicate returned," and sign his name thereto; without which endorsement the treasurer's receipt shall not be deemed an acquittance for the amount, unless the treasurer shall report the payment thereof in his annual report. The clerk shall charge the treasurer with the amounts of all receipts so retured to him.

Accounts with sheriff.

With treasurer.

11. The clerk shall keep all the accounts of the county in a suitable book or books, on which he shall charge the sheriff or other collector of taxes with the amount of the annual levies for the use of the county, and of all fines and other demands placed in his hands for collection for account thereof, and credit him only with the amount of the treasurer's receipts returned by him, as required by the eighth section, and with such allowances as may be made him, by the board for delinquents or other cause. The clerk shall also, on the said book or books, charge the county treasurer with the amount of all claims, demands, and securities placed in his hands for collection for account of the county, and with the amount of the sheriff's and other receipts returned to the clerk as herein required, and of all other payments to

the treasurer which shall otherwise come to the knowledge of the clerk; and credit him with the amount of all orders drawn on him as aforesaid, and issued to the person entitled to the payment thereof, and quarterly with the per centage or commission allowed him by the board. The clerk shall also keep an accurate account of all obligations, securities, and other property placed in the hands of the treasurer for safe keeping or any purpose other than collection.

Lists of bonds, &c.

Examination of clerk's books

12. The presiding supervisor shall at least once in every quarter of a year, and any other supervisor may at any time during business hours, inspect and examine the account and other books of the clerk; and if he find errors therein, or omissions therefrom, shall report the same to the board; who shall thereupon take such action as the circumstances of the case may in their opinion require. At the stated meeting of the board first after the annual township election, or at an adjournment thereof, the board shall, either by themselves or a committee appointed for the purpose, who shall duly report to them, examine carefully the books of the clerk, and compare them with the tax books, the treasurer's receipts to the sheriff and others, and such other county books, documents and vouchers, as they may deem proper; all of which shall be produced to them for the purpose by the clerk or other officer having charge thereof. They shall also, in like manner, carefully inspect the annual report of the treasurer, and compare the same with his account on the books of the clerk, and with the orders paid by him, which he shall produce for the purpose; and if the said orders are properly endorsed, and the board is satisfied that his report is correct, they shall so enter upon their journal, and direct their clerk to furnish a duly certified copy of such entry to the treasurer; who, upon receipt thereof, shall, having first cancelled without defacing them, hand to the clerk the orders paid by him and alllowed in his report, who shall carefully file the same in his office.

And treasurer's report.

County levy.

13. At the stated meeting of the board of supervisors appointed to be held on the twentieth day of June in each year, on which day the fiscal year of the county shall begin, or at an adjournment thereof, they shall proceed to ascertain by reference to the books and papers in the office of the clerk of the board relating thereto, and otherwise, the amount due by the county and remaining unpaid of each class of expenditures, the amount of debt contracted and payable within the current fiscal year, and the amount required to meet the estimated expenditures of the same period, and shall thereupon levy so many cents on every hundred dollars value of the taxable property of their county as will cover the probable aggregate of liabilities and expenditures for that year, including a reasonable allowance for possible delinquencies; which shall be collected by the sheriff or other collector of taxes of their county at the same time and in the same manner as the state levies are collected, and the proceeds of such collections, and of the collection of all levies directed by law for county purposes, shall be by the officer charged with the collection of the same paid over to the treasurer of his county at least once in every quarter of a year, counting from the twentieth day of June; who shall, as above

Collection of the levy.

prescribed, deliver duplicate receipts for every payment made to him, one of which receipts the sheriff shall without delay, file with the clerk. If the board of supervisors of any county shall refuse or neglect to levy, as aforesaid, for any debt previously contracted and falling due within the current fiscal year, any party aggrieved, or likely to be aggrieved thereby, giving at least ten days notice of his intention so to do to the clerk of the board, may apply by petition to the circuit court of the county, or to the supreme court of appeals; and if a proper case is presented and proved, the court petitioned may, if it deems it a proper case for its interference, require the said supervisors to make such levy as the case requires, and may award costs as they shall deem proper.

Failure to lay levy.

Remedy of party aggrieved.

Enforcement of ordinances.

14. The supervisors of every county shall have power to enforce the observance of all ordinances legally passed by them in the exercise of their police and administrative powers, by the imposition of such reasonable penalty for any breach thereof as they may deem proper, not exceeding the sum of fifty dollars in any one case. Such penalties may be recovered, with costs, for the use of the county, before any court or justice having jurisdiction.

CHAP. 89.—An ACT relating to the Townships and Township Officers.

Passed November 2, 1863.

Be it enacted by the Legislature of West Virginia:

Powers of township.

1. Each township is a body corporate, and may sue and be sued by its corporate name before any court or justice before whom a person may sue or be sued under similar circumstances. It shall have power to purchase, to receive grants, devises, bequests and conveyances of, and to hold, real estate for the public use of its inhabitants, and to grant, convey and dispose of the same; and to make all contracts and agreements that may be necessary and convenient in the proper exercise of its corporate and administrative powers. Every grant, devise or conveyance of land within its limits, made in any manner for the use or benefit of its inhabitants, shall have the same effect as if made to it by its corporate name.

Authority of voters to make township regulations.

2. The voters of each township may, at any legal meeting where the same is in order, make all necessary and proper by-laws and orders for the government of their meetings, and for the regulation of the affairs of their township committed to their administration, subject to such rules and limitations as may be prescribed by law; and may, in like manner, impose suitable penalties for the breach thereof, not exceeding, unless specially authorized, ten dollars in any one case, and sue for and recover the same before any court or justice having jurisdiction; but no such by-law or order having a future or continuous operation shall take effect until ten days after copies thereof have been posted at three of the most public places in the township. By-laws and orders so made and published shall be binding on all persons, coming into the township or owning property therein, to which

such by-law or order applies, as well as to the inhabitants thereof, and shall remain in force until altered or repealed.

Failure to hold annual township meeting.

3. If any township shall omit to hold its annual meeting and election at the time fixed by law, it shall be lawful for any five freeholders thereof, to appoint another day for holding such meeting and election, by posting notices of the time, place and object thereof at three of the most public places in such township, at least ten and not more than twenty days before the day so appointed. The voters of the township who assemble pursuant to such appointment shall have and may exercise all the powers they would have had, and might have exercised, on the day fixed by law for holding such meeting and election.

Division of township owning real estate.

4. When a township possessed of real estate shall be divided into two or more townships, the supervisors of the several townships constituted by such division, shall meet as soon as may be after the first township meetings subsequently held in such townships, and when so met, shall have power to make such agreement concerning the disposition to be made of such township property, and the apportionment of the proceeds, as shall be equitable, and to take all measures and execute all conveyances, which may be necessary to carry such agreement into effect.

Alteration of the lines of such township.

5. When any such township shall be altered in its limits by the annexing of a part of its territory to another township or townships, the supervisors of the township from which territory shall be taken, and of the township or townships to which the same shall be annexed, shall, as soon as may be after such alteration, meet for the purpose and possess the powers provided in the last preceding section. But the provisions thereof and of this section shall not apply to any cemetery or burial ground the title to which is vested in the township; but the same shall belong to the township in which it may be situated, after a division shall have been made.

Proviso.

Division or alteration of township owning personal estate.

6. When a township possessed of or entitled to money, rights, credits, or other personal estate, shall be so divided or altered, such personal estate, shall be apportioned equitably between the townships interested therein, by the supervisors of such townships, according to the amount of taxable property in the townships divided or altered, as the same existed immediately before such division or alteration, to be ascertained by the last assessment lists of such townships; and the supervisors shall meet for the purpose aforesaid, as soon as convenient after the first township meeting subsequently held in such townships. Debts owing by a township so subdivided, or altered, shall be apportioned in the same manner as the personal property of such township; and each township shall thereafter be charged with its share of such debts, according to such apportionment.

Debts of such township.

Meetings of supervisors of townships so altered or divided.

7. Whenever a meeting of the supervisors of two or more townships shall be required in order to carry into effect the provisions of the last three preceding sections, such meeting may be called by either of the said supervisors; but the supervisor calling the same shall give

at least five days notice to each of the other supervisors of the time and place of such meeting.

Township treasurer.

8. At the first township election, and at every annual township election, and whenever a vacancy is required to be filled, the voters of each township shall elect a township treasurer, whose powers, duties and compensation shall be such as are herein, or may be hereafter, prescribed by law. No person shall be eligible to office in any township who is not at the time of election a qualified voter thereof.

Supervisor.

9. The supervisor of each township shall be the chief executive officer thereof, and shall have the superintendence of all the affairs and property of his township, and shall see that all laws, ordinances, bylaws and orders made for the government thereof are duly and promptly executed by the proper officers; and when the journal of the proceedings of any township meeting has been read and approved, he shall sign the same. In case of repeated or continued neglect of duty, incompetence or misconduct in office, by any township officer, he shall report the facts of the case to the board of supervisors of his county, if such board have power to remove such officer, and if not, to the next annual or special meeting of the voters of his township. He shall preside at all township meetings and elections held within his township, and preserve order thereat, and do all such other acts pertaining to his office as are or may be prescribed by law. For every day on which he shall attend an annual, adjourned or special township meeting, unless there is an election on the same day, he shall be entitled to a fee of one dollar, to be paid from the township treasury.

Removal of officers.

Pay of supervisors.

Township clerk.

10. The clerk of each township shall have the care and custody of all the books and records thereof, and of all papers appertaining to or ordered to be deposited in his office, which he shall properly file and endorse. Copies of all such papers and records, and transcripts from the books of his office and from the township journal, certified by him to be true copies or transcripts, shall have the same effect as evidence in any court, or before any justice, as if the originals had been produced; and for making such copies and transcripts, he shall be paid by the person requiring them, such fees as are or may be allowed by law to the recorder of the county for similar services. He shall attend all meetings of the voters of his township, and shall keep a journal of their proceedings, entering therein at length every by-law and order passed or adopted. He shall read the journal of the proceedings of each day's meeting and have the same corrected, if it require it, and signed before the adjournment thereof, except where the meeting adjourns from day to day, in which case the journal may be read, corrected and signed at the opening of the adjourned meeting. Before entering on the discharge of the duties of his office, he shall give bond with security, payable to the state of West Virginia, in the penalty of one thousand dollars, or such sum as may be fixed by a majority of the voters of his township, voting on the subject at the annual meeting next preceding the commencement of his term of service, to be approved by the supervisor and treasurer of his township, (which approval they shall endorse on the bond,) and conditioned as

Certified copies of records, etc.

Clerk's fees.

Bond of clerk.

required by the constitution; which bond shall be filed in the office of the clerk of the board of supervisors of the county. In addition to all fees to which he is or may be entitled by law, he may be allowed by his township for his public services such sum, not more than three hundred dollars per year, as shall be fixed by the board of supervisors, to be paid out of the county treasury. He shall keep an office at some convenient place within his township, the rent whereof, if any, and the cost of all necessary books, stationery, and other suitable conveniences, shall be audited by the township committee, and paid from the township treasury.

Annual pay of clerk.

His office.

11. The clerk of each township shall keep all the accounts thereof in a suitable book or books, on which he shall charge the sheriff or other collector of taxes of his county, with the amount of the taxes directed by law or the order of an annual meeting of the voters thereof to be levied for the use of his township, and of all demands placed in the hands of such sheriff or collector for collection for account thereof, and credit such officer with the amount of the township treasurer's receipts returned by him and such allowances as may be made him by the proper authority for delinquents or other cause. The clerk shall also on the said book or books charge the treasurer of his township with the amount of all claims, demands, and securities placed in his hands for collection for account of his township, and with the amount of the sheriff's and other receipts issued by the treasurer and returned to the clerk, and of all other payments to such treasurer for account of the township, which shall come to the knowledge of the clerk, and credit the treasurer with the amount of all orders drawn upon him as hereinafter provided.

Duties of clerk respecting township accounts.

12. The treasurer of each township, before entering on the discharge of the duties of his office, shall give bond, with security to be approved by the supervisor and clerk of his township, (who shall endorse their approval thereon,) in the penalty of two thousand five hundred dollars, or such other sum as may be fixed by a majority of the voters of his township, voting on the subject at the annual meeting next preceding the commencement of his term of service. Such bond shall be made payable to the state of West Virginia, and conditioned as directed by the constitution; and when duly executed and approved, shall be filed in the office of the clerk of the board of supervisors of the county. The treasurer shall have the care and custody of all obligations and other securities for the payment of money, and of all money belonging to his township, and shall safely keep the same, and deliver or pay out none except to the orders of the supervisor of his township, countersigned by the clerk thereof. As compensation for his services, he shall be entitled to retain five dollars in the hundred of all receipts of money for the use of his township, except receipts from the sheriff or other collector of taxes, of which he shall retain only three dollars in the hundred.

Treasurer's bond

Treasurer's duties.

His compensation.

13. The treasurer shall demand, collect and receive all money, and securities for the payment of money, and all penalties due to his town-

His authority.

ship; and may sue for and recover the same in its corporate name or in his own name as treasurer thereof, but for its use, if the case so require. He shall at least once in every quarter of a year, counting from the twentieth day of June, demand and receive from the sheriff or other collector the taxes levied on the property of his township for the use thereof, the proceeds which shall then be collected of all such taxes and of all penalties and other demands and claims thereof previously placed in the hands of such officer for collection. To every person from whom he shall receive any money for the use of his township he shall give duplicate receipts, numbered in rotation, one of which such person shall hand to the clerk to be filed and preserved in his office; and the clerk shall write upon the other the words "duplicate returned," and sign his name thereto; without which the receipt retained by such person shall not be evidence of payment as against the township. The receipts of the treasurer shall be in the following form or to the same effect:

No. ——. Township of ——, in the county of ——,
[Date,] —— —, ——,

Received from A. B. for the use of the said township —— dollars and —— cents, for which he is entitled to credit on the books of the clerk.

$ ——. C. D., *Treasurer.*

Claims against township.

14. Every person having a demand or claim against a township shall file with the clerk thereof, at least ten days before the next annual meeting, an account or statement, in writing, fully setting forth the items thereof, or if the same is for services for which no rate of compensation is fixed by law or township order, the number of days occupied in such service. All such demands and claims shall be accurately listed and numbered by the clerk, who shall number with corresponding numbers the accounts or statements so filed with him, and shall also prepare a list of all demands or claims not then payable, but which will be payable during the coming year. On the day of the annual meeting he shall lay such lists, accounts or statements, and vouchers, with any information relating thereto in his possession, before the township committee hereinafter provided for, who shall proceed to compare each account or statement with the vouchers therewith filed, and, so far as may be necessary, with the books and papers in charge of the clerk, and to allow the whole or such part of each demand or claim as they may think just and right, or to disallow the whole. For so much of each demand or claim so allowed as is then properly payable, the clerk shall within ten days prepare an order on the township treasurer, payable to the order of the person entitled thereto, or his assigns, which he shall countersign and present to the supervisor, who shall attend at the office of the clerk on the tenth day for the purpose and sign the same, if it correspond with the allowance made by the township committee; but orders for demands or claims subsequently payable shall be prepared and signed when they are payable. All such orders shall at any time thereafter, on proper application therefor, be delivered by the clerk to the parties to whom the

same are made payable, on their signing suitable receipts for the amount of their respective demands or claims. Such orders shall be in the following form or to the same effect:

No. ——. Township of ——, in the county of ——,
[Date,] ——, ——.

The treasurer will pay to A. B., (or C. D., assignee of A. B.,) or order, the sum of —— dollars and —— cents, in full of claim No. —, as allowed by the township committee at the annual meeting of 18—.
$ ——. E. F., *Supervisor.*
G. H., *Clerk.*

And every such order, properly endorsed by the payee, shall be paid by the treasurer on presentation, if there are funds in his hands applicable to the purpose.

Claims disallowed.

15. Any person whose demand or claim against a township is disallowed in whole or part by the township committee may again file the same, or his demand or claim for the part disallowed, with the clerk of such township, with such additional vouchers and proofs as he may deem proper. The clerk shall lay the same before the next township meeting, whether special or annual, and the meeting, after examination and consideration, shall allow the demandant or claimant such sum or further sum as they may think just and right, to be paid by an order on the treasurer in the usual form, or may refuse to make any allowance or further allowance. If the demandant or claimant be still dissatisfied he may then, but not previously, sue for the sum he demands or claims before any court or justice having jurisdiction. If the judgment is against the township, the supervisor thereof, with the assent of the clerk and treasurer, or either of them, may order an appeal to be taken on behalf of the township; but no appeal bond shall be required. If judgment on the appeal is given against the township, or no appeal be taken, the supervisor and clerk shall forthwith issue to the appellee or person entitled thereto an order on the treasurer of their township for the amount of the recovery.

Treasurer's annual statement.

16. It shall be the duty of the treasurer to lay before the township committee on the day of the annual meeting a statement, verified by his signature, of his receipts and expenditures up to that time, designating each credit by the number of the duplicate receipts given to the person who made the payment, and each item of his expenditures by the number of the township order on which the same was paid, and showing the balance due to the township remaining in his hands. He shall also at the end of the term for which he was elected lay before the said committee a similar statement, and in each case, also, a statement of the obligations and other securities and property in his hands for safe keeping or collection.

His final report.

Township committee.

17. At the opening of every annual meeting in each township there shall be appointed, by a majority of the voters present and voting thereon, a committee of five voters, being freeholders of the township, who shall be called the township committee, and shall serve for one year, and shall have power to fill any vacancies which may oc-

cur in their number, a majority of whom shall be a quorum. Immediately upon their appointment, after discharging the duty required of them in a previous section of this act, they shall proceed to ascertain from the lists and account books of the clerk, the statements of the treasurer, and any other sources of information accessible to them, what amount it will be necessary to levy on the taxable property of the township to meet the necessary expenditures of the coming fiscal year, including the balance of all claims against their township over the money in or due to its treasury applicable to their payment then payable and unpaid, the amount of claims and appropriations payable during the next fiscal year, and the probable amount of the current and contingent expenses of the same period; which estimate they shall reduce to writing, distinguishing the different classes of expenditure, and present to the annual meeting on the same day if practicable, and if not, then on the day to which it shall be adjourned for the purpose. The meeting shall thereupon proceed to consider the report of the committee, and may, if good reasons therefor appear, correct their estimate, and by an order entered on their journal shall direct an amount sufficient to cover the estimate so reported or corrected, making due allowance for probable delinquencies and expenses of collection, to be included in the next annual levy on the taxable property of their township; a copy of which order the clerk, as soon as possible thereafter, shall cause to be served upon the assessor of the county or district in which such township is situated.

Township levy.

18. The township committee shall again assemble at the clerk's office on the twentieth day of June in the same year, and receive from the treasurer his report of his receipts and expenditures since the annual meeting, and by comparison with the account books of the clerk and otherwise, shall ascertain the balance due the township by the treasurer, and also the amount of commission which he is entitled to retain. The outgoing clerk and treasurer, and those who have been elected their successors, shall attend at the same time and place, and the latter shall produce certificates of their qualification, and thereupon the said committee, or a majority of them, shall, by an order in writing signed with their names, direct the outgoing clerk to deliver to his successor all the books, papers and other property appertaining to his office; and by a similar order direct the outgoing treasurer to deliver and pay over to his successor the obligations, securities and other papers and property in his possession, and the balance of money due to the township remaining in his hands.

Treasurer's report to committee.

Outgoing and incoming clerk and treasurer.

Additional township levy.

19. The voters of each township, at any legal annual meeting, or at a special meeting duly called for the purpose, if the votes in favor of the proposition are two-thirds of the whole number given, or equal in number to a majority of all the votes of the township, in addition to all taxes required by law to be levied on the property of their township, may levy taxes on such property for the following purposes, within the limits hereinafter specified:

For the better maintenance and improvement of the free schools established by law within their township, not more in any one year than five cents on every one hundred dollars of the taxable value of such property, according to the most recent legal assessment of the same; For free schools.

For procuring the necessary land and erecting school-houses and furnishing the same, not more in any one year than five cents on every one hundred dollars of such value; For school-houses, etc.

For the opening, repair and improvement of public roads and the building and repair of bridges on the same, not more in any one year than ten cents on every one hundred dollars of such value; For roads and bridges.

For purchasing the necessary land and erecting a township hall for holding meetings and elections and the accommodation of the township clerk and other officers, not more in any one year than five cents on every one hundred dollars of such value; Township buildings.

For purchasing the necessary land or lands and enclosing and embellishing the same for one or more cemeteries or burial grounds, not more in any one year than five cents on every one hundred dollars of such value.

But nothing in this section contained shall prevent the township making contracts for any of the above purposes, if the payments on account thereof are so arranged that the annual appropriation required to meet the same shall not exceed the amount by this section authorized to be raised for such purpose in any one year. Proviso.

CHAP. 90.—An ACT admitting the county of Jefferson into, and making the same part of, this state.

Passed November 2, 1863.

WHEREAS, by an act of the general assembly of the state of Virginia, entitled "An Act giving consent to the admission of certain counties into the new state of West Virginia, upon certain conditions," passed February fourth, eighteen hundred and sixty-three, it was, among other things, enacted that at the general election on the fourth Thursday of May, one thousand eight hundred and sixty-three, it should be lawful for the voters of the district composed of the counties of Frederick and Jefferson, or either of them, to declare by their votes whether the counties of the said district should be annexed to and become part of the state of West Virginia, and the consent of the said general assembly was thereby given for the annexation to this state of such district, if a majority of the votes polled therein should so determine; provided, that this legislature should also consent and agree to the said annexation; after which all jurisdiction of the state of Virginia over the district so annexed should cease; Preamble. Act of General Assembly of Virginia.

And whereas, it was further provided by the said act that it should be the duty of the governor of the state of Virginia to ascertain and certify the result of the said vote as other elections are certified, and Francis H. Peirpoint, governor of the state of Virginia, did, on the Compliance with said act certified by the governor of Virginia.

fourteenth day of September, in the present year, after reciting that polls were opened in the said county of Jefferson, on Thursday, the twenty-eighth day of May, eighteen hundred and sixty-three, on the question of annexation to the said new state, certify, under his hand and the less seal of the state of Virginia, that from the returns made to the executive department thereof, a very large majority of the votes cast at the said election were in favor of the said annexation of the said county of Jefferson to the state of West Virginia; therefore,

Be it enacted by the Legislature of West Virginia:

Jefferson county admitted.

Added to 2nd Congressional district, 10th Senatorial district, and 10th judicial circuit.

Delegates.

1. The county of Jefferson, lately constituting part of the commonwealth of Virginia, is hereby admitted into and made part of this state; and shall constitute part of the second congressional district, of the tenth senatorial district, and of the tenth judicial circuit; and shall at the election herein provided for, and at every annual state election thereafter, choose two members of the house of delegates.

Election.

Officers to be elected.

Superintendents of election.

2. It shall be the duty of the governor, so soon as he shall have reason to believe that an election can be properly held in the said county, to issue his proclamation directing an election to be held on such day as he shall appoint, at the several places for holding elections therein, for the election of two delegates, an assessor, clerk of the circuit court, sheriff, prosecuting attorney, surveyor of lands, and recorder, and appointing three voters of the said county, any two of whom may act, and any one or more of whom may fill vacancies in their own body, who shall serve as superintendents of the said election.

Commissioners and conductor.

Authority of commissioners.

3. The said superintendents shall, for every place of voting in the said county, appoint three commissioners, any two of whom may act, and a conductor, to superintend and conduct the election at the place for which they are appointed. They shall furnish the commissioners for each place of voting with the proper ballot-boxes, poll books and forms. But if at the time the polls should be opened at any place of voting there shall be present but one commissioner willing to act, he shall associate with himself as a commissioner some freeholder of the county then present; and if there be no commissioner present willing to act, any two freeholders of the county present, and willing to act, shall be commissioners.

Manner of conducting election.

Blanks and copies of constitution to be furnished to and distributed by superintendents.

4. In all other respects the said election shall be conducted, and the result ascertained, certified and returned, according to the directions contained in clauses V, VI, VII, VIII, IX, X, XI, XII, XIII, XVII, XIX, XX, and XXI of an ordinance of the constitutional convention, entitled "An ordinance to provide for the oganization of the state of West Virginia," passed February nineteenth, eighteen hundred and sixty-three. The secretary of the state shall prepare and forward in time to the superintendents to be appointed as aforesaid, poll books and the proper forms of oaths and returns, and three printed copies of the constitution as amended, for every place of voting in the said county; and the said superintendents shall make proper distribution of the same.

5. The terms of office of the persons elected at the election herein directed to be held, shall commence as soon thereafter as they are qualified as required by law; but if for more than one year, shall continue and be computed as if the same had begun on the first day of January last, and if for one year only, as if the same had begun on the first day of January next. Terms of office.

6. All officers acting within the said county by the authority of the laws of Virginia, and under the reorganized government thereof, at the time of the passage of this act, shall continue to exercise the powers and perform the duties of their respective offices, in the name and under the authority of the state of West Virginia, until the officers elected or appointed under this or any other act of this legislature for the discharge of similar duties, are qualified. Officers incumbent.

7. The terms of the circuit court for the said county shall commence on the twenty-seventh day of April, June, October and December in every year. Terms of circuit court.

8. The governor shall also appoint one person for each magisterial district of the said county commissioners to divide the same into townships, under the provisions of an act entitled "an act to provide for the division into townships of the several counties of the state," passed July thirty-first, eighteen hundred and sixty-three. Township commissioners.

CHAP. 91.—An ACT declaring the South Fork of Fishing Creek, in the county of Wetzel, a public highway.

Passed November 4, 1863.

Be it enacted by the Legislature of West Virginia:

The south fork of Fishing Creek, in the county of Wetzel, from Hay's Mills up to Aiden Ice's Mills, is hereby declared a public highway for the transportation of boats, lumber, or other material; but this act shall not be so construed as to prevent the owners of coal or other minerals from removing the same from the bed of said creek. South fork of Fishing Creek made a public highway. Proviso.

CHAP. 92.—An ACT to amend an Act providing for the sale of a certain lot of land held in trust for certain purposes in the town of Wellsburg, in the county of Brooke, passed March 15, 1850.

Passed November 4, 1863.

Be it enacted by the Legislature of West Virginia:

1. An act providing for the sale of a certain lot of land held in trust for certain purposes in the town of Wellsburg, in the county of Brooke, passed March fifteenth, eighteen hundred and fifty, is hereby amended by inserting the name of Narcissa Doddridge instead of Philip B. Doddridge, and by striking out of the first section the following words at the end thereof: "and require the removal of the vault and remains therein deposited, according to the object that may be sought in such application to the court;" and by striking out of the first section the word "superior," and the words "of law and chancery;" and by Act for sale of lot of land in Wellsburg containing family vault, amended.

Proceedings in court.

amending the second section so as to read as follows: "2. That any person or persons concerned in interest or convenience in regard to the situation or location of said lot of land and the use to which it is appropriated, may be made defendants to such bill or petition, and the same shall be proceeded in in the same manner prescribed by laws for bills exhibited by guardians for the sale of the real estate of their wards; and the proceeds of the sale, if such sale shall be decreed, shall, after discharging the expenses of the purchase of a lot in the Wellsburg cemetery, in which is interred the remains of the said Dr. Joseph Doddridge, and of removing the remains thereto, and of erecting thereon a monument, if any there be, be vested for and applied as a fund for the purpose of keeping in repair the said lot last aforesaid and the monument thereon, or to the use and benefit of the heirs or descendants of the original grantor, the said Joseph Doddridge, deceased, as the said court may deem best; but into whatever hands the proceeds, or the surplus of the proceeds of such sale may come or be placed, the said court shall require ample security that the same shall be faithfully applied in such manner as the said court may direct."

Application of proceeds of sale.

CHAP. 93.—An ACT in relation to Juries.

Passed November 4, 1863.

Be it enacted by the Legislature of West Virginia:

Certain sections of chapter 162 of code amended.

1. The fourth, fifth, sixth, seventh, eighth, ninth, tenth, eleventh, twelfth, twenty-seventh, twenty-eighth, twenty-ninth, thirtieth, thirty-second and thirty-third sections of chapter one hundred and sixty-two of the code of Virginia, second edition, shall be amended and re-enacted so as to read as follows:

Board of supervisors to make out jury lists.

"4. The board of supervisors of each county shall, as soon after this act goes into effect as may be, and thereafter at their stated meeting in December annually, prepare a list of such inhabitants of the county, not exempted as aforesaid, as they shall think well qualified to serve as jurors, being persons of sound judgment and free from legal exception, which list shall include at least twenty persons for every thousand inhabitants in such county; but in no case shall such list include a less number than fifty persons.

Number of persons to be included.

List to be kept by clerk of court.

"5. The list so prepared shall be delivered to the clerk of the circuit court, to be by him safely kept, subject only to the inspection of the court or of the recorder, as hereinafter prescribed; and the court may strike from such list the name of any person who has been convicted of any scandalous offense or been guilty of any gross immorality.

Names erased by the court.

Ballots—how prepared.

"6. At the time such list is made out, the board of supervisors shall also cause all the names upon the same to be fairly written, each on a separate paper or ballot; and shall fold or roll up the ballots so as to resemble each other as nearly as may be, and so that the name written thereon shall not be visible on the outside; and shall deposit the ballots in a secure box to be prepared for the purpose, which shall be delivered to and safely kept by the clerk of the circuit court, and shall be opened only by order of the court or by the recorder, as hereinafter prescribed.

Box for the ballots.

Who may open same.

"7. All jurors required for the trial of cases in any circuit court, except cases of felony, shall be selected by drawing ballots from the said box in the manner prescribed in this act, and the persons whose names are written on the ballots so drawn, shall be returned to serve as jurors. Grand jurors shall be summoned as now provided by law.

Jurors to be drawn from box.

Grand jury summoned as heretofore.

"8. The clerk of every circuit court shall, at least twelve days before any term of such court at which a jury may be wanted, issue a writ of *venire facias* for twenty-eight jurors, and shall therein require the attendance of the jurors on the first day of the court, or such other day thereof as the said court shall order; but whenever, in the opinion of the circuit court of any county in the state, a greater number of jurors than twenty-eight is necessary for the dispatch of the business of said court, such opinion shall be entered of record, together with the number of jurors deemed necessary by said court; and thereafter it shall be the duty of the clerk of such court to issue a *venire facias* for the number of jurors so designated.

VENIRE for 28 jurors to be issued before each term.

Court may order a larger number.

"9. At the same time such clerk shall issue a summons in the name of the state, requiring the recorder of the county to attend at the clerk's office of the circuit court of such county, on a day named in such summons, which shall not be less than seven nor more than ten days before the day on which the jurors are required, for the purpose of drawing the ballots for jurors.

Summons to the recorder.

"10. The writ of *venire facias* and summons shall be delivered to the sheriff or other officer who shall serve the summons on the recorder, and it shall be the duty of such recorder to attend on the day designated in the summons, at the clerk's office of the circuit court of the county, and in the presence of the clerk of the circuit court, to cause the proper number of jurors to be drawn from the box, and a list thereof to be delivered to the officer serving the summons. And it shall be the duty of such officer at least three days before the time when the jurors are required to attend, to summon each person who is drawn to attend the sitting of the court at the time and place mentioned in the writ, and make a due return thereof and of the summons aforesaid, at the opening of the court from which they issued. If, in pursuance of the eighth section of this act, more than twenty-eight jurors are required by the circuit court of any county, and shall have been summoned, it shall be the duty of the said court to divide by lot the said number of jurors equally into two classes of twenty-eight jurors each, which shall be denominated "class number one" and "class number two." And it shall be the duty of class number one to serve as jurors, to the exclusion and relief of class number two, from the first to the sixth day of the term inclusive; at which time it shall be the duty of the jurors of class number two to attend and serve as jurors, except in those cases where any of the jurors of class num-

Proceedings to draw the number ordered.

Recorder to draw the jurors.

Summoning the persons drawn.

When jurors drawn divided into two classes.

How the two classes to serve.

ber one are actually sworn in a cause, to the exclusion and relief of class number one, from the seventh to the twelfth day of the term inclusive. And the said classes, number one and number two, shall so on alternately serve as jurors until the end of the term to which they may have been summoned as jurors.

How the drawing conducted.

"11. When jurors are to be drawn as aforesaid, the ballots in the jury box shall be shaken and mixed together, and the recorder shall openly draw therefrom as many ballots (without inspecting the names written on any until the proper number is drawn) as shall be equal to the number of jurors required; and if any person whose name is so drawn, is exempted by law, or is unable by reason of sickness, absence from home, or other cause, to attend as a juror, his name shall be returned into the box, or if his name has been struck from the jury list, the ballot shall be destroyed and another shall be drawn in his stead.

Exempts.

Names drawn to be noted on the ballots.

And jury list.

"12. When any person is drawn and returned to serve as aforesaid, the recorder shall cause to be endorsed on the ballot containing his name, the word "drawn," and shall return it to the box; and the date of the draft shall be entered on the list of jurors opposite his name. In case the recorder shall fail to perform the duties required of him under this or the two preceding sections, the same shall be performed by the clerk of the board of supervisors.

Clerk of board may act if recorder fail to do so.

Pay of grand juror.

Out of county treasury.

"27. Every person who shall serve upon a grand jury shall be entitled to receive one dollar for each day he may so serve, to be paid out of the county treasury; but he shall not in any case receive more than three dollars for services rendered at one term of court.

Pay of juror in cases of felony.

"28. Jurors in prosecutions for felony shall be paid as provided in the tenth section of chapter two hundred and eight.

Pay of juror attending on venire.

"29. Any person summoned as aforesaid by virtue of the *venire facias*, and actually attending upon the court, whether he be called to serve on a jury or not, shall, for each day he so attends, be entitled to receive one dollar, to be paid out of the county treasury; except that for any day that any person shall be sworn to serve on a misdemeanor case he shall for that day be paid out of the state treasury. There shall be taxed in the costs against any person against whom a verdict of a jury may be rendered in a misdemeanor case, six dollars for jury costs, which, when collected from such party shall be paid into the state treasury. And there shall be taxed in the costs against any person in a civil cause, who may be non-suited, or against whom a verdict of a jury may be rendered, the sum of six dollars for jury costs, which, when collected off of said party shall be paid into the treasury of the county.

Out of county treasury.

When out of state treasury.

Jury costs—amount of and against whom taxed.

Juror departing without leave not to be paid.

"30. No juror who shall depart without leave of the court, or being summoned as a witness for the state, shall charge for his attendance as such, shall be entitled to receive any compensation for his services as a juryman.

"32. The clerk of any court upon which jurors are in attendance shall, before its final adjournment at each term and under the direction of the court, make an entry upon its minutes, stating separately the amount which each juror is entitled to receive out of the state treasury or out of the county treasury for his services or attendance during the term. It shall be the duty of such clerk, as soon as practicable after the adjournment of the court to transmit to the auditor certified copies of all orders under this section, making allowances payable out of the state treasury.

Clerk of court to keep account of what each juror is entitled to.

And report to auditor amounts payable by state.

"33. It shall be the duty of such clerk as soon as practicable after the adjournment of the court, to deliver to each juror a certified copy of any order under the next preceding section, making an allowance to him, payable out of the state treasury or out of the county treasury; and the sheriff of such county shall, upon demand, pay to such juror the amount allowed him, which shall be repaid to the sheriff out of the state treasury or out of the county treasury upon the production of satisfactory proof that the same has actually been paid by him."

Certificate of amount due him to be given to each juror.

Which the sheriff is to pay.

2. Every person summoned as a juror shall, before he is sworn as such, make oath or affirmation that he will support the constitution of the United States and the constitution of this state.

Jurors to take oath to support the constitution.

3. The thirty-first and thirty-seventh sections of chapter one hundred and sixty-two of the Code of Virginia, second edition, are hereby repealed.

Sec. 31 and 37 of chap. 162 repealed.

4. The tenth section of chapter two hundred and eight of the Code of Virginia, second edition, shall be amended and re-enacted, so as to read as follows:

Sec. 10 of chapter 208 amended.

"10. In a felony case in a circuit court, if qualified jurors, not exempt from serving, cannot be conveniently found in the county in which the trial is to be, the court may cause so many as may be necessary of such jurors, to be summoned from any other county by the sheriff thereof, or by its own officer. Every juror so summoned shall be paid one dollar for each day he attends, and the same mileage as a witness in a civil case; and every juror residing in such county, summoned on such jury, shall be paid in like manner, one dollar for each day he attends. Such jurors shall be forthwith paid by the officer of the court, and he shall be repaid out of the state treasury on the order of the court."

Jury from another county in cases of felony.

Pay of such juror.

5. All persons placed upon any list of persons from which jurors are to be selected or drawn, and all persons summoned as grand or petit jurors, shall be persons of known loyalty to this state and the United States, who have not voluntarily borne arms against the United States, nor given aid, counsel, countenance or encouragement to persons engaged in armed hostility thereto; and who have not yielded a voluntary support to any pretended government, authority, power or constitution within the United States, hostile or inimical thereto. Any objection to a juror arising under this section shall be a good cause for challenge before he is sworn as a juror. No plea in abatement to any indictment shall be allowed for any objection to any grand juror arising under this section.

Loyalty of grand and petit jurors.

Exceptions for disloyalty.

CHAP. 94.—An ACT to extend the corporate limits of the City of Parkersburg.

Passed November 5, 1863.

Be it enacted by the Legislature of West Virginia:

Extension of corporate limits.

1. The corporate limits of the town of Parkersburg, in the county of Wood, are hereby so extended as to include all the land lying between the Ohio and Little Kanawha rivers, to the south and west of a line beginning on the Ohio river at a line between lands now or late of Albert G. Leonard and Tillinghast A. Cook, and running thence with the said line and an extension thereof to a line of lands now or late of James M. Stevenson; and thence with the last mentioned line to the Little Kanawha river; and all the land lying between the said rivers and to the south and west of the above described line, not heretofore a part of the said town, is hereby annexed thereto and made part thereof.

Government of land annexed.

2. The land so annexed to the said town, and the inhabitants thereof, are hereby made subject to the jurisdiction of the council of the said town, as fully as the present town and its inhabitants are now subject thereto; and shall be governed by all the provisions of the original charter of the said town and the acts amendatory thereof, so far as the same are now of force, except as hereinafter excepted.

When taxed.

3. No part or parcel of the land hereby annexed to the said town, now used exclusively for gardening, farming, grazing, pasturing or other agricultural purpose, shall be assessed with or be liable for any taxes levied for the use of the said town or the council thereof, unless, or until, such part or parcel has been, or shall hereafter be, laid off into streets and lots, and such lots have been, or shall hereafter be, sold or offered for sale by the owner or owners thereof.

When buildings on same to be taxed.

4. No building now or hereafter erected on the land so annexed to the said town shall be taxed by the said town or the council thereof, unless the same fronts on some street, alley, road or turnpike, by which such building is accessible from the present limits of the said town; but where any building is so situated, the same, and not exceeding one acre of land connected therewith and appropriated to the purposes thereof, or of its occupants, may be assessed according to its value, and the owner or occupier thereof charged with such taxes or levies thereon as may be lawfully imposed by the said council; but the rate of taxation so charged shall not exceed one-half of the rate at the same time charged against similar property within the present limits of the said town.

Rate of taxation thereon.

Tax on lands when certain improvements shall have been made by council.

5. Whenever the said council shall cause any side-walk, or any part thereof, on any street, road or turnpike that is now or may hereafter be opened through any part of the land hereby annexed to the said town, to be graded and the curbstone thereof to be set or placed on one or both sides of such street, road or turnpike, all the land on both sides thereof, so far as the said grading and curbing extends, to the depth, not exceeding two hundred feet, of one tier of lots on either side, may at the next or any subsequent assessment of the property of the said

town, be assessed according to its value, and thereafter taxed at the same rate as similar property within the present limits of the said town is or may be taxed.

Turnpike lying within extension.

6. So much of any turnpike in which the state is interested, as lies within the said extension, is hereby to the extent of such interest ceded and relinquished to the said town, upon condition that the said town shall keep the same in good order and repair, and shall not at any time charge or receive any toll or other compensation for the passage or transportation over the same. The said council having acquired the necessary land for the purpose, may alter the location of so much of any turnpike or of any public road as lies within the said extension, in order to conform the same to the general plan of the said town, or for any other public purpose. They shall also cause all the streets and public roads lying within the same to be kept in good order and condition; but this shall not apply to any street or road hereafter opened or dedicated to the public within the said extension by private persons, unless the said council shall have first accepted such street or road as a street of the said town.

Authority of council to change location of same.

Duty of council respecting streets and roads within extension.

Survey and maps of exterior line.

7. As soon as practicable after the passage of this act, the said council shall cause the exterior line of the said town from river to river, as described in the first section of this act, to be accurately surveyed, if necessary, and designated on the ground by suitable marked objects or monuments, and two accurate maps or plats of the land hereby annexed to the said town to be made, one of which shall be retained by them, and the other deposited in the office of the recorder of the county of Wood, to be there recorded at the expense of the said town.

Change in designation of town.

8. From and after the passage of this act the said town shall be known as the City of Parkersburg; and all laws now in force having relation to the said town by its former designation, shall have the same relation to the said city.

CHAP. 95.—An ACT to alter part of the division lines between the county of Webster and the counties of Randolph, Nicholas and Greenbrier.

Passed November 7, 1863.

Be it enacted by the Legislature of West Virginia:

Alteration of lines between Webster, Randolph, Nicholas and Greenbrier.

1. The division lines between the county of Webster and the counties of Randolph, Nicholas and Greenbrier, are hereby altered so as to run as follows, to-wit: Beginning at a corner of the counties of Webster and Nicholas, at or near the mouth of Skile's creek, on Big Birch river, and running thence with a line of the two counties last named, and an extension thereof, a straight course to the mouth of Stroud's creek, on Gauley river; thence to a corner now of the counties of Nicholas and Greenbrier, on or near Cranberry river, and thence a straight course to a corner now of the counties of Greenbrier and Pocahontas, on or near Gauley river, and thence with a line of Pocahontas to the mouth of Dry Fork on Elk river, and thence a

straight line to where the present line of Webster county leaves the county of Upshur; and so much of the counties of Randolph, Nicholas and Greenbrier as is included within the said lines is hereby annexed to and made part of the county of Webster.

Addition to Webster.

Ratification of change.

2. The alteration and annexation herein provided for shall not be of force unless the same are ratified by a majority of the votes cast "for alteration" and "against alteration," at an election to be held in the county of Webster, and also in the county of Randolph, the county of Nicholas and the county of Greenbrier, on the day of the first township election to be held in each; nor unless the surveyor of the county of Webster shall run and mark the new line above described, and make five fair plats thereof, which he shall duly certify, and forward one to the secretary of the state, and one each to the recorders of the counties of Webster, Randolph, Nicholas and Greenbrier, who shall file and carefully preserve the same in their respective offices.

Survey and maps of new lines.

Compensation of surveyor.

3. The account of the said surveyor for fees and expenses incurred under the provisions of this act shall be audited by the board of supervisors, and paid out of the treasury of the county of Webster.

CHAP. 96.—An ACT fixing the limits for Allowances to County Officers.

Passed November 7, 1863.

Be it enacted by the legislature of West Virginia:

Allowances by boards of supervisors to.

The following named county officers shall be allowed, annually, by the boards of supervisors of their respective counties for their public services, (for which no other fee or reward is allowed by law,) to be paid out of the county treasury, such sums as the said boards deem reasonable, to-wit: Prosecuting attorneys, not less than one hundred or more than six hundred dollars; sheriffs, not less than fifty or more than two hundred dollars; clerks of boards of supervisors, not less than fifty or more than six hundred dollars; clerks of circuit courts, not less than fifty or more than two hundred dollars; and jailors, not less than thirty or more than sixty dollars.

Prosecuting attorneys. Sheriffs.

Supervisor's clerk. Circuit clerks.

Jailors.

CHAP. 97.—An ACT to compel the attendance of Members of the Legislature.

Passed November 7, 1863.

Be it enacted by the Legislature of West Virginia:

Absence without leave forbidden.

1. No member shall absent himself from the service of the legislature, without leave of the branch of which he is a member first obtained. Either branch shall at any time have power to compel the attendance of absent members, and may send the sergeant-at-arms, or any other person or persons by them authorized, for any or all absent members, not absent on leave, as the majority of such members present shall agree, at the expense of such absent members respectively, unless such excuse for non-attendance shall be made, as either branch

Authority to compel attendance.

At expense of absentee.

of the legislature, when a quorum is convened, shall judge sufficient, and in that case the expense shall be paid, when certified by the presiding officer, out of the general appropriation made for the pay of the legislature. Unless he be excused.

2. Either branch of the legislature, by a vote of a quorum thereof, may enter on its journal a vote of censure against any member whose attendance it may have found necessary to compel by virtue of the preceding section; but no censure shall be voted against any member until he has had an opportunity to make excuse for such absence before a quorum of the branch of which he is a member, and such quorum shall have voted his excuse insufficient. Vote of censure. Proviso.

CHAP. 98.—An ACT to authorize the recovery of damages when death is caused by the wrongful act or default of another.

Passed November 9, 1863.

Be it enacted by the Legislature of West Virginia:

1. Whenever the death of a person shall be caused by wrongful act, neglect or default, and the act, neglect or default is such as would (if death had not ensued) have entitled the party injured to maintain an action to recover damages in respect thereof; then, and in every such case, the person who, or the corporation which, would have been liable, if death had not ensued, shall be liable to an action for damages, notwithstanding the death of the person injured, and although the death shall have been caused under such circumstances as amount in law to murder in the first or second degree, or manslaughter. Case in which damages may be recovered.

2. Every such action shall be brought by and in the name of the personal representatives of such deceased persons; and the amount recovered in every such action shall be for the exclusive benefit of the widow and next of kin of such deceased person, and shall be distributed to such widow and next of kin in the proportions provided by law in relation to the distribution of personal estates left by persons dying intestate, and in every such action the jury may give such damages as they shall deem fair and just, not exceeding five thousand dollars, with reference to the pecuniary injury resulting from such death to the wife and next of kin to such deceased person: provided, that every such action shall be commenced within two years after the death of such deceased person. How action may be brought. Amount recovered. Limit to amount recoverable. When action must be commenced.

CHAP. 99.—An ACT changing the name of the Lunatic Asylum at Weston.

Passed November 12, 1863.

Be it enacted by the Legislature of West Virginia:

The directors of the lunatic asylum at Weston shall continue to be a corporation, but instead of their present name shall hereafter have the corporate name of the "West Virginia Hospital for the Insane." And the said board of directors shall have and exercise the same powers that the board of directors of the lunatic asylum west of the Alleghany mountains were heretofore authorized by law to exercise. West Virginia Hospital for the Insane.

CHAP. 100.—An ACT to regulate Elections by the People.

Passed November 13, 1863.

Be it enacted by the Legislature of West Virginia:

General elections. Officers to be elected annually.

1. There shall be elected on the fourth Thursday of October, in the year eighteen hundred and sixty-four, and the same day in every year thereafter, delegates for the several delegate districts and counties not included in delegate districts; and one senator for every senatorial district;

Officers to be elected every two years.

And on the fourth Thursday of October, in the year eighteen hundred and sixty-four, and the same day in every second year thereafter, a governor, secretary of the state, treasurer, auditor and attorney general for the state; a representative in the congress of the United States for each congressional district, for the term commencing on the fourth day of March next after the election; and a prosecuting attorney, surveyor of lands, recorder, county treasurer, and the number of assessors prescribed by law, for every county;

—four years.

And on the fourth Thursday of October, in the year eighteen hundred and sixty-six, and the same day in every fourth year thereafter, a judge of the supreme court of appeals for the state; and a clerk of the circuit court and sheriff for every county;

—six years.

And on the fourth Thursday of October, in the year eighteen hundred and sixty-eight, and the same day in every sixth year thereafter, a judge for every circuit;

Presidential electors.

And on the Tuesday next after the first Monday of November, in the year eighteen hundred and sixty-four, and the same day in every fourth year thereafter, or at such other time as congress shall prescribe, electors of president and vice president of the United States for this state. At least sixty days before the election for the said electors the governor shall, by proclamation, to be published in some newspaper printed in each county of this state where any such paper is printed, give notice of the time for holding such elections, and the number of electors to be then chosen.

Places of voting.

2. The former election precincts and places of voting shall be retained in each county until it is divided into townships, but shall then be abolished; and all elections by the people be held thereafter at the places to be appointed, in the manner hereinafter prescribed, for holding township elections.

Places of holding township elections. How first appointed. To be appointed thereafter by board of supervisors.

3. The commissioners for each county named in the schedule of the act passed July thirty-first, eighteen hundred and sixty-three, entitled "An act to provide for the division into townships of the several counties of the state," shall appoint some convenient place or places in every township of their county for holding the first township election; and the board of supervisors of each county shall thereafter from time to time appoint the places for holding elections in the several townships of their county; but all township and other other elections shall be held at the places to be appointed, as aforesaid, by the said commissioners, until the board of supervisors shall otherwise order.

4. When a place for holding elections is appointed or changed by a board of supervisors, their clerk shall notify, in writing, the clerk of the township interested, who shall file such notice in his office, and immediately cause copies thereof to be conspicuously posted at the place appointed or changed, and at two other public places in the township; and may also give notice thereof by advertisement in the newspapers, if there be any, printed in the county.

Change of place of voting—how notified.

5. The first township election shall be held in every township on such day as may be designated for the purpose by the commissioners named in the said schedule for the county of which such township is a part; and if from any cause it be not held on the day first appointed, the said commissioners may designate another day therefor; and so again from time to time until the first township election be held. The commissioners shall cause at least ten days notice to be given of the time and place for holding such election, by notices conspicuously posted at three public places in each township, and may also give notice by advertisement in the newspapers, if there be any printed in the county. They shall appoint for each township three proper persons, who are voters thereof, to act as temporary supervisor and inspectors at the said election, and make due returns thereof to the board of supervisors to be then elected for the county; and the persons so appointed shall employ the necessary clerks or writers. They shall also cause proper ballot-boxes, poll-books, tally-papers and forms, and whatever else may be necessary for holding the said first township election and making due returns thereof, to be provided and furnished in proper time at every place of voting in their county. If at the time for holding the said election any of the persons appointed to act as temporary supervisor or inspectors be absent, or being present fail or refuse to act as such, the other or others of them may fill the vacancy, or if they all be absent, or fail or refuse to act, or none have been appointed, the voters present may appoint any three voters of the township as temporary supervisor and inspectors. If the commissioners named in said schedule for any county fail to fix the place and time for holding the said first election in any township of their county, then any three voters residents of such township may, at any time after the first day of December, in the present year, fix the same by giving the same notice thereof as the commissioners for the county are in this section directed to give. All expenses properly incurred in carrying this section into execution shall be certified by the said commissioners to the board of supervisors of the county, and be audited and paid as provided in the fiftieth section of this act. The first and second sections of the schedule of the act passed September twenty-fifth, eighteen hundred and sixty-three, entitled "an act providing for and regulating township meetings and elections," are hereby repealed so far as they are inconsistent with this act.

Time of holding first township election.

Notice thereof.

Who to conduct same.

Ballot boxes, &c., to be furnished.

Absence, &c., of the conductors provided for.

Failure to fix the time and place of first township election.

Expenses of the election.

Laws repealed.

6. The annual township elections shall be held on the fourth Thursday of April, in the year eighteen hundred and sixty-four, and the same day in every subsequent year; but if the first township election be not held in any county before the fourth Thursday of April next,

Annual township elections.

it may be appointed and held after that day under and according to the preceding section.

Township elections. Officers to be elected annually.

7. At the said first township election, and every annual township election thereafter, the voters of each township shall elect a supervisor, clerk of the township, an overseer of the poor, a township treasurer, and two inspectors of election;

Officers to be elected every four years.

And at the said first township election, and the annual township election to be held in the year eighteen hundred and sixty-seven, and every fourth year thereafter, they shall elect a justice; and an additional justice if the white population of their township exceed twelve hundred;

—every two years.

And at the said first township election, and the annual township election to be held in the year eighteen hundred and sixty-five, and every second year thereafter, they shall elect as many constables as justices.

Surveyors of roads—first election of.

County treasurer—first election of.

Law repealed.

The first election for surveyors of roads shall be held in the manner prescribed in the third section of the schedule of the act passed September twenty-fifth, eighteen hundred and sixty-three, entitled "an act providing for and regulating township meetings and elections," and thereafter at every annual township election, a surveyor of roads shall be elected for each road precinct in the township. At the time and place of holding the first township election in each county there shall be elected by the voters thereof a county treasurer for the unexpired term ending on the first day of January, eighteen hundred and sixty-five, to fill the vacancy now existing in said office; which election shall be held, conducted and returned by the same persons, and be subject to the same regulations as the said first township elections. So much of the eighth section of an act entitled "an act defining, in part, the powers and duties, and regulating the proceedings of, the boards of supervisors of the several counties in the state," passed November second, eighteen hundred and sixty-three, is hereby repealed, as is inconsistent with this act.

Township officers first elected.

Their term of office.

Term of those elected thereafter.

Law repealed.

8. The supervisors, clerks of the several townships, surveyors of roads, overseers of the poor, township treasurers, inspectors of election, justices and constables, first elected, shall respectively enter on the discharge of their official duties as soon as they have taken the proper oaths of office and given bond, if any bond be required by law; but their terms of office shall expire as if the same had commenced on the twentieth day of June last. The terms of the said officers to be elected at the annual township elections shall commence on and include the twentieth day of June next after the election at which they are chosen, and continue for the periods prescribed by law. And the fourth section of the schedule of the act passed September twenty-fifth, eighteen hundred and sixty-three, entitled "an act providing for and regulating township meetings and elections," is hereby repealed so far as it is inconsistent with this act.

Inspectors of election. Each voter to vote for but one.

9. Of the inspectors of election to be elected in each township, each voter shall vote for but one only, and if any vote be given for more than one it shall not be counted as to the said office; but the two per

sons receiving the highest number of votes, if residents of the township and voters therein, shall be declared elected.

Removal of inspector from office.

10. Any inspector of election may be removed from office by the board of supervisors of the county, for the same causes and in the same manner as county officers are removable by said board; two-thirds of the whole number elected to the board concurring in such removal.

Vacancy in office of inspector—how filled.

11. When there is a vacancy in the office of inspector of election, the supervisor of the township shall order an election to fill such vacancy, and cause the clerk of the township to give notice thereof in the manner prescribed in the seventh section of the act providing for and regulating township meetings and elections, passed September twenty-fifth, eighteen hundred and sixty-three.

If more than one place of voting in a township.

Officers for such place—how appointed.

12. If there be more than one place for holding elections in any township, the supervisor and inspectors of election for such township shall, from time to time, appoint suitable voters residing convenient to such additional place, to act as supervisor and inspectors at the elections there to be held, and the persons so appointed shall hold their office for the same term as those who appointed them, and be removable by the board of supervisors of the county in like manner as the inspectors elected by the voters of the township.

Ballot boxes, &c.—how provided.

13. The clerk of the board of supervisors of every county shall, at the expense thereof, provide and furnish in proper time at every place of voting in the county, proper ballot boxes, poll books, tally papers and forms, and whatever else may be necessary for holding the elections at such place and making due returns thereof.

Oath of officer holding election.

14. Every officer and person employed in holding any election by the people, shall, before entering on the discharge of his duties, take the following oath: "I solemnly swear that I will support the constitution of the United States, and the constitution of this state; and that in the election about to be held, I will faithfully and impartially discharge my duties, to the best of my skill and judgment." The supervisor or any one of the inspectors at any election, or of the persons acting as such, may administer the said oath to the others, and to the clerks and writers.

Supervisor and inspectors to hold all elections.

15. The supervisor and inspectors of elections, (which words shall be construed to include those who act as such, temporarily or otherwise,) shall superintend, conduct, and make returns of all elections by the people held in their respective townships during their term of office, whether for United States, state, circuit, district, county or township officers; elections for municipal and militia officers excepted.

Their absence, &c., provided for.

16. If, at the time of election, the supervisor or either of the inspectors be absent, or fail or refuse to act, or there be a vacancy in either office, the other or others of them may appoint a voter of the township to fill the place for the time; or if they all be absent, or fail or refuse to act, or none have been elected or appointed, any three vo-

ters of the township may be appointed by the voters present to act as supervisor and inspectors of such election.

Clerks of lections.

17. The clerk of the township, assisted by such person or persons as the supervisor and inspectors may employ for the purpose, shall record the names of the persons voting, and assist in counting the votes, ascertaining the result and making proper returns thereof. If the clerk be absent, or fail or refuse to act, or there be no clerk then in office, the supervisor and inspectors shall appoint a suitable person to discharge his duties at the said election.

How questions decided at the polls.

Keeping order at the polls.

18. The supervisor shall preside at the election; and if there be a difference of opinion between the inspectors, shall decide between them. He shall preserve order at, and in the vicinity of the polls; and may direct any disorderly person to be removed therefrom, and if necessary or proper, to be taken and held in custody till sunrise of the next day, or for any shorter time; which may be done by any constable of the township, or other person or persons designated by the supervisor, and no warrant or authority in writing shall be necessary. And such offender, notwithstanding his having been in custody as aforesaid, shall be liable to any penalty or punishment for his offence prescribed by law. And any person who, being thereto commanded by the supervisor, either verbally or in writing, shall fail or refuse to assist, to the utmost of his power, in whatever may be necessary or proper to prevent intimidation, disorder or violence at the polls, shall forfeit not less than five nor more than fifty dollars.

Time of opening and closing the polls.

19. The polls shall not be opened before sunrise, and shall be closed at sunset. But at every township election, if there be a township meeting on the same day, the polls shall be opened at the hour of eleven, unless the business of the meeting be sooner concluded or the same be sooner adjourned; in which case the polls may be opened immediately thereafter. If there be no township meeting on the same day, the township election shall commence at the hour of nine in the forenoon, or as soon thereafter as practicable. In either case the polls at the township elections shall continue open until sunset; but if the inspectors so direct, there may be a recess of not more than one hour at such time, after the opening and before the closing of the polls, as they may appoint.

Recess of one hour at township election.

Vote to be by ballot.

20. All elections by the people shall be by ballot; and shall, as far as practicable, be so conducted that it may not be known at the polls for whom any person has voted.

Ballot box.

How kept during the poll.

21. The ballot box shall have an aperture in the lid or top thereof to receive the ballots of the voters. While the polls are open, it shall be kept where it may be seen by the voters, and after the polls are closed, until the votes are counted and the certificates of the result are signed, shall remain in the immediate custody of the supervisor and inspectors, or any one of them, with the consent of the others. But it shall not be opened unless the three be present; and if left at any time in the custody of one of the number, it shall be carefully sealed so that it cannot be opened without breaking the seal, and the others

shall write their names across the place or places where it is sealed. Provided that if, at any time before the returns are completed, one or more of the inspectors be absent, their places may be supplied according to the provisions of the sixteenth section.

Poll books.

22. Every poll book shall bear on the first page thereof the following heading: "Names of all persons voting at ——, in the township of —— and county of ——, this —— day of ——." Two lists shall be kept at every election of the names of the voters.

Voting—how done.

23. Every person wishing to vote at any election, shall offer to one of the inspectors a single ballot of white paper, containing the names of the persons for whom he desires to vote, and designating the office he wishes each of them to fill; which ballot shall be so folded or rolled that its contents cannot be seen. The inspector who receives the ballot shall proclaim distinctly the name of the person offering it, and hand it to the other inspector; and if both inspectors, or when they differ one of them and the supervisor, are satisfied the ballot is single, and that the person offering it is entitled to vote at the said election, one of the inspectors shall deposit the ballot in the box, and the clerks shall enter the name of the voter on the poll books. The supervisor and inspectors may inspect every ballot before it is deposited in the box, to ascertain whether it is single, but without unfolding or unrolling it so as to disclose its contents.

Who are to vote.

24. The supervisor and inspectors, at every election, shall permit all persons to vote who are residents of their township, and qualified to vote according to the first section of the third article of the constitution; but every person present and offering to vote shall, in time of war, insurrection, or public danger, if required by any voter of the township, take, before the supervisor or one of the inspectors, an oath that he will support the constitution of the United States and the constitution of this state, or produce to them the certificate of some officer authorized to administer oaths that he has taken the said oath, under pain of suspension of his right of voting. And the supervisor or either of the inspectors is hereby authorized to administer the said oath at the polls; and also to swear any person to answer questions respecting any right to vote which is claimed.

Oath of voter, if required.

Votes rejected.

25. The supervisor and inspectors shall reject the ballots of all persons not entitled to vote; but the name of every person whose ballot is rejected, shall, if he require it, be entered in a separate list on the poll books under the heading "Rejected votes;" and the rejected ballot shall in such case be sealed up in an envelope or cover, endorsed "The ballot of A B, rejected this —— day of ——," and be returned along with the other ballots.

Absent voters.

How their votes are to be given.

26. Any person entitled to vote in the township, who is necessarily absent therefrom on the day of any election, in the service of the Uni- States or of this state, may, at any time within the twenty-five days next preceding the election, enclose his ballot in an envelope or cover, and seal up the same and write his signature in his own proper hand on the outside of the said envelope or cover, adding to his sig-

nature some description or designation of the service in which he is employed, as for example: "Private, Co. A. 14th W. Va. Infantry." "Col. 2d W. Va. Cavalry," "Senator U. S." "Mem. Ho. Reps. U. S." "Senate W. Va.," "Ho. Del. W. Va.," "Governor," "Treasurer," "Judge of 2d Circuit," or otherwise as the fact may be. If the signature of a soldier upon such envelope or cover, be by mark, it must be attested by the person commanding at the time the regiment, company or detachment in which such soldier is employed. The envelope or cover shall be addressed to the supervisor and inspectors of the township of which the voter is a resident, or any one of the said officers, either by their names or official designations, and be transmitted by mail or otherwise. And if such envelope and enclosure be received by the supervisor and inspectors or any one of them, on or before the day of election, it shall be produced at the polls held in the said townihip; and if the inspectors, or when they differ, the supervisor and one of the inspectors, be satisfied that the signature on the outside of the envelope or cover is genuine, and that the person whose signature it is would, if present, be entitled to vote at the said polls, they shall open the envelope or cover, and if the ballot found therein be single, shall deposit the same in the box without unfolding or unrolling it so as to disclose its contents, to have the same effect as if the person so transmitting his vote were personally present giving the vote. And if such ballot be deposited in the box, the clerks shall enter the name of such voter on the poll books, adding thereto the word "absent." The envelopes or covers, in all such cases, shall be preserved by the supervisor and inspectors, and be filed by them as soon as possible after the close of the polls, with the clerk of the board of supervisors of the county, for public inspection.

Envelopes to be kept for public inspection.

Who are residents.

27. No person in the military, naval or marine service of the United States shall be deemed a resident of this state, or of any county or township thereof, by reason of his being stationed therein; and if any person be a resident of any county or township at the time he enters such service, or the service of this state, his residence, unless he makes known his intention to change the same, shall be considered as continuing in the said county or township during the said service, although he be stationed or employed elsewhere.

Counting the votes after the polls are closed.

28. As soon as possible after the polls are closed, the names entered on the poll books shall be counted by the inspectors and clerks in the presence of the supervisor, and the number thereof be set down in words at length at the foot of the lists, which shall then be signed by the inspectors and clerks. The ballot-box shall then be opened, and one of the inspectors taking therefrom one ballot at a time, in the presence of all the other officers, shall read therefrom the designations of the offices to be filled, and the names of the persons voted for for each office, and hand the ballot to the other inspector; who, if satisfied it was correctly read, shall string it on a thread. The contents of the ballots as they are read shall be entered by the clerks, under the supervision of the supervisor and inspectors, on tally-papers provided for the purpose, by suitable marks made opposite to or under

the name of each person voted for, so as to show the number of votes received by every person for any office to be filled. The ballots shall be counted as they are strung upon the thread; and whenever the number shall be equal to the number of voters entered on the poll books, the excess, if any, remaining in the ballot box shall be immediately destroyed without unfolding or unrolling the same, or allowing any one to examine or know the contents thereof.

Certain votes not to be counted.

29. If two or more ballots be found folded or rolled together they shall be rejected and immediately destroyed. And if any ballot be found to contain more than the proper number of names for any office, it shall not be counted as to the said office. If any election for senator, or delegate for a delegate district, if a person be voted for in any ballot, who is not a resident of the proper county, as required by the fourth and eleventh sections of the fourth article of the constitution, the ballot shall not be counted for the said office; or if two or more persons are to be chosen as delegates for a delegate district, or for two counties voting together, and it is required by the constitution that they should be residents of different counties, but the persons voted for be residents of the same county, the ballot shall not be counted in favor of either of the said persons. No mistake or error in the designation of the office or person voted for in any ballot shall vitiate the same or cause it to be rejected, if it be manifest what was intended by the voter.

Mistake in ballot —rule respecting

Inspectors' certificates. Form of.

30. As soon as the results are ascertained the inspectors shall sign two certificates thereof to the following effect: "We, the undersigned, who acted as inspectors of the election held at ———, in the township of ———, and county of ———, on the ——— day of ———, do hereby certify, that having been first duly sworn, we have fairly and impartially held the said election according to law, and the result thereof is as follows: For the office of ———, (here designate the office, as for example, "Delegate for the county of Barbour," or "Delegate for the first delegate district," or "Senator for the first senatorial district," "Judge for the first circuit," "Representative in the congress of the United States for the first congressional district," "Governor of the state," "Judge of the supreme court of appeals," "Supervisor of the said township," and so-forth, as the case may be,) "A. B. received ——— votes, C. D. ——— votes, and E. F. ——— votes," and so on throughout, stating, according to the truth, the full name of every person voted for for every office, and in words at length the number of votes he received for the same; and concluding as follows: "Given under our hands this ——— day of ———." The said two certificates shall correspond in all respects with each other, and each shall contain complete returns of the polls taken at the said place of voting for every office to be filled. When the said certificates are signed, the ballots, including the rejected ballots sealed up as provided by the twenty-fifth section of this act, shall be enclosed by the inspectors in an envelope or cover, which they shall seal up, and write their names across the place or places where it is sealed, and endorse on the outside of the said envelope or cover as follows: "Ballots of the election held at

Ballots to be sealed up.

Ballots, poll books and inspectors' certificates—how disposed of.

——, in the township of ——, and county of ———, the —— day of ———." The inspectors, or one of them, shall, within three days, excluding Sundays, after the day on which the election was held, deliver the ballots so sealed up, one set of the poll books, and one of the said certificates, to the clerk of the board of supervisors of their county, and the other certificate and set of the poll books to the recorder of the county.

Board of supervisors judges of election.

Proceedings of board.

31. The board of supervisors of each county shall be the judges of the election, qualifications and returns of their own members, and of all county and township officers. They shall convene on the twelfth day after every election held in their county or any township thereof, and their clerk shall lay before them the ballots, poll books, inspectors' certificates and the envelopes which contained the ballots of absent voters, delivered to him as aforesaid. They may, if deemed necessary, require the attendance of any of the inspectors or other officers or persons present at the election, to answer questions under oath respecting the same, and may demand the production of the poll books and certificates concerning the said election filed in the office of the recorder; and take such other order as shall seem proper to procure correct returns and ascertain the true result of the said election in their county. They may adjourn from day to day as in other cases; and when a majority of the board is not present their meeting shall stand adjourned till the next day. They may open and examine any of the sealed packages of ballots; but in such case they shall seal up the same again along with the original envelope or cover, in another envelope or cover, and their presiding officer or clerk shall write his name across the place or places where it is sealed, and endorse on the outside, "Ballots of the election held at ——, in the township of ——, and county of ———, the —— day of ———." When they have made their certificates and declared the result as hereinafter provided, they shall deposit the envelopes of the absent voters and the sealed packages of ballots in the office of the recorder. The recorder shall carefully preserve the certificates and poll books deposited in his office. The envelopes of the absent voters and the sealed packages of ballots shall be preserved by him for one year, and then be destroyed without opening the said packages.

Envelopes, ballots, &c.,—how disposed of.

County and township officers

Resolution of board declaring who are elected.

32. When an election is held for any of the following officers, that is to say: Prosecuting attorney, surveyor of lands, recorder, assessor, clerk of the circuit court, county treasurer, and sheriff; or supervisor, clerk of the township, surveyor of roads, overseer of the poor, township treasurer, inspectors of election, justice and constable; the board of supervisors of the county, at a meeting held pursuant to the last section, shall declare by resolution or resolutions entered on their journal, who are elected and to what offices; except in cases where notice in writing has been previously filed with their clerk, or is presented at such meeting before the resolution is passed, of the intention of any person voted for at such election for any office, to contest the election of any person appearing to have received a higher number of votes than the contestant for such office, or where notice is given as

Contested cases.

aforesaid by any voter of his intention to contest the qualifications of any person appearing by the returns to be elected. In such cases no declaration of the result shall then be made; but the board shall appoint a day, not less than five nor more than twenty days thereafter, when they will hear and consider such written depositions taken on behalf of either party on due notice to the other, and such documentary evidence as may be produced. They may continue the hearing from time to time if it be shown that justice and right requires it, but not beyond the twentieth day after the day first appointed for the hearing; and after they have heard, as aforesaid, the evidence, they shall in like manner declare the result in the contested cases. The cost of each deposition, or set of depositions, and of each official copy, to be used in evidence in such case, shall be noted thereon by the officer taking the depositions or furnishing the copy; and the board may direct what amount of the said costs, and of the costs of serving notices, either party is entitled to recover from the other; the amount so certified, if not paid within ten days, may be recovered before any court or justice having jurisdiction.

Proceedings in contested cases.

Costs in contested cases.

33. When the result of an election is declared by the board of supervisors, pursuant to the last section, the said board shall cause a copy of the resolution, signed by their presiding officer and clerk, to be delivered, if demanded, to each person thereby declared to be elected; and such copy shall be received in all courts and places as legal evidence of the result of the election therein declared.

Credentials of county and township officers.

34. In any county where there is not at the time a board of supervisors, the persons lawfully acting as supervisors of the election within the county, or a majority of them, may convene on the twelfth day after the election and act as such board, under and pursuant to the last three sections.

Counties where there is no board of supervisors.

35. When an election is held in a county for any of the following officers, that is to say: For delegate, senator, governor, secretary of the state, treasurer, auditor, attorney general, judge of the supreme court of appeals, judge for a circuit, representative in the congress of the United States, and electors of president and vice-president of the United States, the board of supervisors of such county under the regulations prescribed in the thirty-first section of this act, shall carefully and impartially ascertain the result of the said election in their county, and cause to be signed by their presiding officer and clerk, as many certificates thereof as may be necessary, to the following effect: "The board of supervisors of the county of —— having carefully and impartially examined the returns of the election held on the —— day of ——, do hereby certify, that in the said county, for the office of ——, A. B. received —— votes, C. D. —— votes, and E. F. —— votes. In witness whereof the said board have caused this certificate to be signed by their president and clerk, this —— day of ——."

State officers, &c.

Board of supervisors to certify the result in their county.

Form of their certificate.

The said board shall cause separate certificates to be signed of the result of the election within their county, for each of the offices specified in this section which is to be filled; and in the said certificates shall set forth, according to the truth, the full name of every person voted for, and in words at length the number of votes he received for any office.

How such certificates disposed of.

36. The certificates of the board of supervisors, made pursuant to the preceding section, shall be by them disposed of as follows:

Delegates to legislature.

Of the certificates respecting the election for delegate or delegates, they shall transmit one to the clerk of the house of delegates at the seat of government; who shall submit the same to the house as soon as it shall thereafter assemble, together with a list of the persons appearing thereby to be elected. The said board shall also deliver one, if demanded, to each person appearing to them to have been elected as delegate;

State senator.

Of the certificates respecting the election for senator, they shall transmit one to the clerk of the senate at the seat of government, to be submitted by him to the senate as soon as it shall thereafter assemble, together with a list of the persons appearing thereby to be elected;

Governor.

Proceedings to ascertain who is elected governor.

Of the certificates respecting the election for governor, they shall transmit one to the secretary of the state at the seat of government, endorsing on the envelope or cover as follows: "Returns of the election for governor;" and stating thereon the aggregate vote in the county for each candidate. The secretary of the state shall deliver the same unopened to the speaker of the house of delegates on the first day of the next session of the legislature; and the speaker shall, within ten days thereafter, in the presence of a majority of each branch of the legislature, open the said returns, when the votes shall be counted. The person having the highest number of votes, if duly qualified, shall be declared elected; but if two or more have the highest and an equal number of votes, one of them shall thereupon be chosen governor by the joint vote of the two branches;

Sec'y of state, treasurer and auditor.

Of the certificates respecting the election of the secretary of the state, treasurer and auditor, respectively, they shall in each case transmit one to the secretary of the state, endorsing on the envelope or cover that it is returns of the election for secretary of the state, auditor or treasurer, as the case may be, and stating thereon the aggregate vote in the county for each candidate; and the same shall be delivered, unopened, to the speaker of the house of delegates on the first day of the next session, to be acted upon by the legislature in like manner as the returns of the election for governor;

Att'y general, judges, representative in congress

Presidential electors.

Commissions of judges and attorney general.

Of the certificates respecting the election for attorney general, judge of the supreme court of appeals, judge for a circuit, representative in the congress of the United States, and electors of president and vice-president of the United States, respectively, the board of supervisors shall transmit one in each case to the governor, who shall ascertain who are elected and make proclamation thereof. The judges and attorney general shall also be commissioned by the governor.

Certificates of board of supervisors—how and where forwarded

In every case the said certificates shall be transmitted, as aforesaid, by mail or some safe and expeditious conveyance to the proper officer, on or before the fifteenth day after the election, in an envelope or cover under seal, the presiding officer or clerk of the board of supervisors writing his name across the place or places where it is sealed.

Duplicates to be filed with recorder.

A duplicate of every such certificate shall also be filed in the office of the recorder of the county for public inspection.

Governor, &c., may send for returns.

37. Whenever the governor, senate or house of delegates, for any reason deem it proper, they may by special messenger or otherwise, send for and procure proper returns from any county or counties; and the poll books, ballots and certificates of the inspectors and board of supervisors, and the envelopes of absent voters deposited in the offices of the recorders shall be at all times subject to the order of the Governor, or of either branch of the legislature.

Credentials issued by the governor.

38. The governor shall, if demanded, give a certificate under his hand and the great seal of the state to every person elected a representative in the congress of the United States, or an elector of president and vice president of the United States, which certificates respectively shall be to the following effect:

Representative in congress.

"State of West Virginia, to-wit:

"I, ——, governor of the said state, pursuant to the act of the legislature thereof, in such case made and provided, do hereby certify that A. B. of the county of ——, was duly chosen on the —— day of ——, a representative in the congress of the United States, for the —— congressional district of this state, composed of the counties of ——, for the term commencing on the fourth day of March next," (or, "for the unexpired term ending on the third day of March ——," as the case may be.) "Given under my hand and the great seal of the said state of West Virginia, this —— day of ——."

Presidential electors.

"State of West Virginia, to-wit:

"I, ——, governor of the said state, pursuant to the act of the legislature thereof, in such case made and provided, do hereby certify that A. B. of the county of ——, C. D. of the county of ——," (and so on, stating the full name of every person elected and the county in which he resides,) "were duly appointed by this state, at an election held therein, on the —— day of ——, electors of president and vice president of the United States. Given under my hand and the great seal of the said state of West Virginia, this —— day of ——."

Presidential electors—when and where to meet.

39. The persons chosen as electors of president and vice president of the United States, shall meet in the office of the governor at the seat of government of this state, on the first Wednesday of December, in the year eighteen hundred and sixty-four, and the same day in every fourth year thereafter, or such other day as congress shall prescribe, and then and there give their votes, and make, certify and transmit lists thereof, in the manner prescribed by the constitution and laws of the United States. If any of the said electors so chosen fail to attend by the hour of ten in the forenoon of the said day, the electors present shall supply the vacancy, by appointing an elector in place of each one so failing to attend; and every elector so appointed shall be entitled to vote in the same manner as if he had been originally chosen by the people.

Their proceedings.

Vacancies.

Their pay and mileage.

40. Every elector of president and vice president of the United States, shall be entitled to the same pay and milage that is allowed to members of the legislature, to be paid out of the treasury of the state.

Credentials of senator of U. S.

41. When any senator shall be chosen by the legislature to represent this state in the senate of the United States, the clerk of the house of delegates shall give information of the same to the governor, who shall cause a credential to be made out to the following effect:

"State of West Virginia, to-wit:

"The legislature of this state having, on the —— day of ——, in pursuance of the constitution of the United States, chosen A. B., of the county of ——, a senator from this state for six years, beginning on the fourth day of March, in the year ——," (or "for such term as may be assigned to him according to the said constitution;" or "to fill the vacancy which has happened by the death," "resignation," or otherwise, "of C. D."). "I, governor of the state of West Virginia, do hereby certify the same to the senate of the United Stases. Given under my hand and the great seal of the said state this —— day of——."

The governor shall accordingly sign the said credential, and cause the great seal of the state to be affixed thereto, and deliver the same to the senator so chosen.

Vacancy in office of senator of U. S.

42. When a vacancy shall happen during the recess of the legislature in the representation from this state in the senate of the United States, and the executive shall make a temporary appointment to fill such vacancy, the governor shall cause a credential, under his hand and the great seal of the state, to be delivered to the person so appointed to the following effect:

Credential of senator appointed by the governor.

"State of West Virginia, to wit:

"A. B. who was, according to the constitution of the United States, a senator from this state for the term ending on the third day of March, in the year, —— having died," ("resigned," or otherwise, as the case may be,) "during the recess of the legislature, I, —— governor of the state of West Virginia, do by virtue of the said constitution appoint C. D., of the county of ——, a senator from this state in the senate of the United States, until the next meeting of the legislature. Given under my hand and the great seal of the said state, this —— day of ——."

Elections to fill vacancies—general rules.

43. Elections to fill vacancies shall be for the unexpired term; and shall be held at the same places as other elections, and be superintended, conducted and returned, and the results ascertained, certified and declared in the same manner, and by the same officers; and the persons elected, having first duly qualified, shall enter upon the duties of their respective offices within ten days after the result of the election shall have been declared according to law.

Vacancy in office of judge, &c.

44. When a vacancy exists in the office or judge of the supreme court of appeals or of any circuit, or secretary of the state, auditor, treasurer or attorney general, or in the representation from this state in the congress of the United States, the governor shall, within ten days after the fact comes to his knowledge, give notice thereof by

Proceedings to fill same.

proclamation to be published in such newspapers printed in the state as he may deem best calculated to give information thereof to the voters of the state, circuit or district; and in the said proclamation he shall appoint some day, not less than thirty nor more than sixty days from the date thereof, for holding the election to fill such vacancy; which election shall be held accordingly. In the case of a vacancy in the office of representative in congress, he shall also issue writs of election, directed to the sheriffs of the several counties included in the congressional district; and every sheriff, on receiving the same, shall immediately give notice thereof to the supervisors and inspectors of election of the several townships of his county. Any vacancy which may exist in the office of judge of the supreme court of appeals, judge of a circuit, secretary of the state, auditor, treasurer, or attorney general, may be filled by the governor, if he deem it necessary, by a temporary appointment to expire when the person to be elected to fill such vacancy shall be duly qualified to act. The bond, if any be required by law, to be given by the officer so temporarily appointed, shall be in such penalty as the governor may direct, or may be dispensed with, if he so order.

Representative in congress.

Temporary appointments by the governor.

Bond in such cases.

45. A writ of election to fill a vacancy in the legislature shall be issued by the governor when the vacancy occurs during the recess of the legislature, and by the president of the senate or speaker of the house of delegates, as the case may be, when such vacancy happens during the session, or has not been previously filled. The said writ shall be directed to the sheriff of the proper county, or to the sheriffs of the several counties included in the delegate or senatorial district, as the case may be, and shall prescribe the day of election; and every sheriff, on receiving the same, shall immediately give notice thereof to the supervisors and inspectors of election of the several townships of his county; and shall also cause notice of the same to be conspicuously posted at every place of voting in such county, and to be published in the newspapers, if there be any, printed therein.

Vacancies in the legislature.

Writ of election.

46. When a vacancy exists in the office of clerk of the circuit court, sheriff, prosecuting attorney, surveyor of lands or recorder, the judge of the circuit to which the county belongs, shall, within ten days after the fact comes to his knowledge, issue a writ of election to fill the vacancy, to be directed and proceeded with in the manner prescribed by the last section; and in the meantime may, if deemed necessary, fill the office by a temporary appointment, to expire when the person to be elected to the said office shall be duly qualified to act. The bond, if any be required by law, to be given by the officer so temporarily appointed, shall be in such penalty as the judge may prescribe, or may be dispensed with, if he shall so order.

When circuit judge to issue writ.

Temporary appointment by the judge.

Bond in such cases.

47. When a vacancy exists in the office of assessor, county treasurer, supervisor, clerk of the township, surveyor of roads, township treasurer, overseer of the poor, justice or constable, the board of supervisors of the county, as soon as they have information of the fact, shall order an election to fill the vacancy, giving at least ten days notice thereof by notices conspicuously posted at three public places

When board of supervisors to order election to fill vacancy.

in each township or townships concerned, and may also give notice by advertisement in the newspapers, if there be any, printed in the county. The sixth section of the "act providing for and regulating township meetings and elections," passed September 25th, 1863, is hereby repealed so far as it is inconsistent with this act.

Law repealed.

Officers to reside in the districts for which they were chosen.

48. Every officer except prosecuting attorney, during his term of office, shall reside in the township, county, district or circuit for which he was elected; and if he remove therefrom, or if any officer remove from the state, the office shall be thereby vacated; but this provision shall not apply to senators and representatives in congress.

Ties—how decided.

49. When the governor or a board of supervisors are to declare the result of an election, and it shall appear to them that two or more of the persons voted for have received an equal number of votes, so that the proper number is not elected, they shall decide the tie by electing one of the said persons.

Pay of officers holding elections

Expenses of elections to be paid out of county treasury.

50. Every supervisor and inspector of election shall be allowed one dollar and fifty cents for each day, and every clerk or writer one dollar for each day, they shall be necessarily employed in holding elections and making returns thereof; which allowances, together with the cost of the ballot boxes, poll books and forms, and all expenses of holding elections in any county, whether for township, county or other officers, shall be audited by the board of supervisors, and paid out of the county treasury, as other claims or demands against the county.

No tax on state seal.

51. When the seal of the state is affixed to any certificate or commission required by this act, no tax or fee shall be charged therefor.

Lists of voters to be made by assessor.
Separate list for each township.

List of absent voters.

Pay of assessor.

To whom list returned, and when.
Penalties on assessor.

52. Every assessor shall, at least thirty days before the fourth Thursday of October in each year during his term of his office, make a separate list for each township in his county, or revenue district, of all white male citizens of the state residing in such township, who, on the said fourth Thursday of October will have attained the age of twenty-one years, and if they shall not in the meantime have changed their residence, will then have resided at least one year in the state, and thirty days in the county. In such list he shall include, under a distinct heading, so far as he may be able to ascertain the same, all persons necessarily absent in the service of the United Ssates, or of this state, who were residents of the township at the time they entered such service, and have not made known their intention to change their residence, and will, on the said fourth Thursday of October, possess the qualifications of voters under and according to the twenty-seventh section of this act. In discharging this duty, the assessors shall be subject to the same rules which are prescribed by law to govern their conduct in ascertaining persons and subjects to be listed for taxation; and shall receive three cents for every person properly listed by them, to be paid out of the county treasury. They shall return a fair copy of the list for each township to the clerk thereof, at least ten days before the said fourth Thursday of October. If any assessor fail to do so or if he wilfully and knowingly make an improper entry on any such list, or wilfully and knowingly omit or refuse to enter thereon any person

who ought to be so entered, he shall forfeit not less than five nor more than one hundred dollars for every such offense. The lists so returned to the township clerks shall be open to public inspection.

General provision as to officer failing to do his duty under this act.

53. If any officer fail to perform any duty required of him by this act, and there is no other penalty or punishment imposed for such failure, he shall forfeit not less than five nor more than fifty dollars for every such offense.

Officer failing to attend election.

54. If any supervisor or inspector of election fail or refuse, without sufficient cause, to attend at the proper time and place for holding any election which it is his duty to assist in holding, he shall forfeit not less than five nor more than thirty dollars for every such offense.

Officer refusing to assist in election.

Or to return the ballots, &c.

55. If any officer whose duty it may be to assist in holding an election, being present at the time and place for holding the same, refuse to do so when required by a candidate or voter; or if any officer neglect or refuse to deliver the ballots, poll books, envelopes of absent voters, or certificates, as required by law, or to make returns in the manner or at the time prescribed by law, he shall forfeit for every such offense not less than ten nor more than one hundred dollars.

Officer taking bad votes or rejecting good ones

56. If an officer at an election knowingly and wilfully receive a bad vote, or reject a good one, or aid in so doing, he shall forfeit not less than fifty nor more than two hundred dollars for every such offense.

Making false return, &c.

Or declaration.

57. If an inspector of election make or sign, or assist in making, any false certificate or return respecting an election, knowing the same to be false, or if a member of a board of supervisors assist or concur in making any false certificate, declaration or return respecting an election, knowing the same to be false, they, and every person aiding or abetting therein, shall each forfeit not less than three hundred nor more than one thousand dollars for every such offense.

No person to vote twice.

58. No person shall vote more than once in the same election; and he shall not vote a second time, although he may not have voted the first time for as many persons or officers as he might have lawfully voted for.

Persons voting when not entitled, Or procuring false votes, &c.,

59. If any person knowingly shall vote when not legally entitled; or vote more than once in the same election; or procure or assist in procuring a bad vote to be admitted or received at an election, knowing the same to be bad, or a good vote to be rejected, knowing the same to be good; or with intent to deceive any voter, alter the ballot of such voter by marking out the name of any person for whom such voter desires to vote; or with like intent write the name or names of any person or persons on such ballot other than those directed by the voter, he shall forfeit not less than thirty nor more than one hundred dollars for every such offense.

Or counterfeit ballots of absent voters, &c.

60. Any person who shall knowingly procure, or attempt to procure, a false, counterfeit or altered ballot to be admitted or received at an election as and for the true ballot of a person absent in the service of the United States or this state, or knowingly aid, counsel or abet another or others in so doing; or procure or attempt to procure, a bal-

lot to be admitted or received at an election as and for the ballot of a person absent in the service of the United States or of this state, knowing that such person is not, within the meaning of this act, entitled to vote at the said election, or knowing there is no such person as the one whose ballot it purports to be; or knowingly aid, counsel or abet another or others in so doing, shall forfeit not less than thirty nor more than one hundred dollars for every such offense.

Bribery.

61. If any person directly or indirectly give or promise to another, or convey, deposit or transfer for the use of another any money or property under an agreement, express or implied, that such other person shall vote or attempt to vote for a particular candidate or candidates at any election, the person so giving, promising, conveying, depositing or transferring the money or property, and the person so agreeing to vote or attempt to vote, shall each forfeit not less than fifty nor more than two hundred dollars for every such offense.

Betting on elections.

62. If any person bet or wager money or other thing of value on any election to be held under authority of the constitution and laws of this state or of the United States, he shall forfeit the value of such money or other thing, and fifty dollars in addition thereto, for every such offense.

Treating voters.

63. If any person who is a candidate for any office under the constitution and laws of this state, shall, himself or by another, offer to or distribute among the voters gratuitously, any intoxicating drink on the day of the election, he shall, if elected, forfeit his office, and on proof of the fact be removed therefrom. Or if any other person offer gratuitously any intoxicating drink to any voter on the day of an election, he shall forfeit not less than ten nor more than fifty dollars.

Places for sale of liquors to be closed on election days.

64. Every place at which intoxicating liquors are sold shall be kept closed on the day when any election is to be held within two miles thereof. And if any person, whether licensed to sell intoxicating liquors or not, sell or offer or expose for sale any such liquor, or keep open any distillery, bar, office, stall or room in his possession or under his control at which such liquors had usually been sold, or permit any person to drink any intoxicating liquor at the same, on the day of an election and within two miles of the place of such election, or during the night succeeding such day, he shall forfeit not less than ten nor more than fifty dollars for every such offense.

Portions of the code repealed.

65. The twenty-seventh, and twenty-eighth sections of the seventeenth chapter of the code of Virginia, second edition; the eleventh and fortieth sections of the one hundred and ninety-eighth chapter; and the fourth, fifth, sixth, seventh, eighth, ninth and eleventh chapters, and the twelfth and thirteenth sections of the tenth chapter of the said code, are hereby repealed.

CHAP. 101.—An ACT to provide for the Forfeiture of Property in this State, belonging to the enemies thereof.

Passed November 13, 1863.

Whereas, certain persons, assuming to act in the name of the people of Virginia, have attempted to repeal the ratification of the constitution of the United States, and to deprive the people of West Virginia of the protection to which we are entitled under that instrument; and have endeavored by force of arms, and by pretended ordinances and acts of legislation threatening forfeiture and confiscation, imprisonment and death, to subject us to the authority of the so-called Confederate States of America; and whereas, because we have been unwilling to aid them in their effort to overturn the government under which we have heretofore lived and prospered, they have waged war against us, have encouraged conspiracies and insurrections in our midst, have excited desperate and unprincipled men among us to acts of robbery and murder, have declared us traitors and alien enemies, and, so far as they had power, have subjected to confiscation or forfeiture all property within this state belonging to those who support and uphold the lawful government of the land: therefore, Preamble.

Be it enacted by the Legislature of West Virginia:

What persons declared enemies of the state.

1. Every person who shall aid or abet the so-called Confederate States of America, or the rebel state government at Richmond, in any invasion of this state or hostile action against the same; or who shall conspire with others to establish or maintain within this state, or any part thereof, the authority of the said Confederate States, or of the said rebel state government; or who shall accept, hold or exercise any office, commission or authority under the said Confederate States or the said rebel state government, shall be deemed for the purposes of this act, an enemy of this state; provided, that any person charged with being such enemy, may show in his defense that he acted under duress, or just fear of life, limb or personal liberty. Proviso.

Property of such enemy forfeited.

2. All the estate, real and personal, of such enemy, which may be found in this state, including all lawful demands of such enemy against any person residing therein, or any corporation having a place of business in the same, shall be forfeited to the use of this state, subject, as hereinafter provided, to the just debts of such enemy.

Circuit court to appoint commissioner to administer estate of such enemy.

3. It shall be the duty of every circuit court, upon its being made to appear that there is just cause to believe that an enemy of the state has property or claims subject to forfeiture, as aforesaid, to appoint some proper person a commissioner to take possession of, collect and administer the estate of such enemy, pursuant to this act. But of every motion for the appointment of such commissioner, the prosecuting attorney for the county where the motion is made shall have reasonable notice; and the court, in its discretion, may also require reasonable notice to be served on the attorney general, or any parties interested, by publication or otherwise; and award costs for or against any such party as may be right and proper. No such motion shall be made in the circuit court of any county, unless the property or claims so subject to forfeiture, or the greater part thereof in value be in such coun- Notice of motion for his appointment. Proviso.

ty. Where the court deems it proper, it may cause a jury to be impanneled to try any question of fact arising upon such motion.

Duty of prosecuting attorney and attorney general.

4. It shall be the duty of the prosecuting attorney, and attorney general, having notice, to see that the interest of the state is duly protected in regard to every such motion and all other legal proceedings under this act.

Commissioner's oath and bond.

5. Every commissioner so appointed shall take the oaths prescribed by the first and second sections of the act passed June twenty-sixth, eighteen hundred and sixty-three, entitled "an act concerning oaths and affirmations;" and give bond to be approved by the court which appointed him, in a penalty equal, at the least, to the full value of the estate to be administered. He shall cause an inventory and appraisement of the estate to be made and filed, and shall state, return and settle his accounts in like manner as is required by law respecting the estates of persons dying intestate. The compensation to be allowed the commissioner shall be the same as that of an administrator. In reference to the personal estate, including debts and claims of the enemy committed to his hands to be administered, the commissioner shall, unless herein otherwise provided, have the same rights and authority, and be subject to the same liabilities as a personal representative of a deceased person in reference to the estate he represents; and all laws regulating the administration of the estates of deceased persons, shall, so far as they are consistent with this act, be deemed applicable to estates liable to forfeiture under this act.

Commissioner's duties.

Commissioner's pay.

Commissioner's authority.

Style of suit.

6. The commissioner may sue and be sued by the name and style of "A. B., commissioner of C. D., an enemy of the state."

Duties of commissioner.

7. The commissioner shall take possession of all real estate of such enemy within this state, and lease, manage, sell and dispose of the same under direction of the court which appointed him. He may convey any of such real estate, but no sale or conveyance thereof shall be valid until reported to and confirmed by the said court. The conveyance of real estate by a commissioner appointed and qualified as aforesaid, shall, when confirmed by the court which appointed him, pass to the grantee all the right, title and interest therein of the person named as an enemy of the state in the order appointing such commissioner; and such conveyance shall not be impeached or invalidated by reason merely of any irregularity of proceeding.

He may convey real estate.

Sale of personal estate by commissioner.

8. No sale of personal estate made by any such commissioner, or any payment made to him, shall be impeached or invalidated by reason merely of any irregularity of proceeding.

Revocation of commissioner's acts.

9. The court which appointed the commissioner may at any time, if it appear that the person named as an enemy of the state in the order of appointment was not justly charged as such, or for any other good cause shown, revoke such order and annul the authority of the commissioner; but such order, until so revoked, shall be deemed valid to all intents and purposes, and no conveyance or sale *bona fide* made shall be invalidated by any subsequent revocation of the authority of the commissioner.

10. No such commissioner shall pay any claim against the estate he represents, until the same be exhibited to the prosecuting attorney for the county where such commissioner was appointed, and such attorney being satisfied of the justice thereof, shall have endorsed his approval thereon. The prosecuting attorney, upon his account thereof verified by his affidavit, shall be allowed out of the estate, one dollar for every hour he shall necessarily be employed in investigating claims presented against such estate. But the commissioner may reject a claim though it was approved by the prosecuting attorney; and any claimant, whose claim has been, in whole or in part, disapproved by the attorney or rejected by the commissioner, may sue for and recover the amount unpaid against such commissioner out of the assets, if any, remaining in his hands to be administered.

Payment by commissioner of claims against estate of enemy.

Fee of prosecuting attorney.

Rejection of claims.

11. No claim shall be approved or paid, if the claimant be an enemy of the state, unless such claim be presented on behalf of a commissioner appointed under this act to administer the estate of such enemy.

Claims of one enemy of the state against another.

12. The commissioner, on his appointment, shall give notice in like manner as an executor or administrator, for all persons having claims against the estate he represents to present the same to him properly authenticated or proved, within six months from the date of his appointment. All just claims against the said estate shall be paid ratably and without preference to one over another, if the estate be not sufficient to pay the whole; but this shall not affect any lien already secured. A commissioner who after the said six months distributes the money in his hands among the claims theretofore presented to him properly authenticated or proved, shall not be liable for any demand against the estate, in whole or in part, unless before such distribution he had notice thereof. Nothing in this act shall be construed to deprive any citizen of this state of the right to proceed against any enemy of the state, or the commissioner having charge of his estate, to recover damages for any injury to person or property caused by such enemy.

Commissioner's notice.

Payment of claims where estate is deficient.

Commissioner not liable after six months notice.

Right of citizen to proceed against enemy not affected.

13. Every commissioner shall within twelve months after his appointment, and once in every six months thereafter, until the estate he represents be fully administered and settled, cause his accounts therewith to be stated and settled; and when the balance in his hands, if any, is ascertained by or under direction of the proper court, shall, within thirty days thereafter, pay such balance into the treasury of the state, unless the court, for good cause shown, otherwise order. And if any claim against the estate remain unpaid which the assets remaining in the hands of the commissioner shall not be sufficient to satisfy, the legislature, on petition of the claimant, shall cause justice to be done out of the money received into the treasury from such estate, so far as the same may be sufficient.

Commissioner's settlements with estate.

Remedy to claimant in certain case.

14. When any settlement of the account of a commissioner appointed under this act is returned to the clerk's office of any court, and the balance due thereon is ascertained as aforesaid, it shall be the duty

Duty of clerks respecting account of commissioner.

of the said clerk, within thirty days, to transmit to the auditor his certificate of the amount in the hands of such commissioner, payable into the treasury of the state. If any clerk fail herein, he shall forfeit one hundred dollars.

Penalty for failure.

Failure of commissioner to render account

Punished.

15. If any commissioner appointed under this act fail to cause his account to be stated and settled as aforesaid, or to pay as aforesaid any amount he may have in his hands payable into the treasury of the state, he and his sureties shall be liable for the principal sum in arrear, with interest thereon at the rate of fifteen per centum per annum from the time such payment should be made until paid, and costs, to be recovered as money due the state is recoverable from sheriffs and their sureties.

Preamble.

16. And whereas, many persons, who on or after the seventeenth day of April, eighteen hundred and sixty-one, resided within what is now the state of West Virginia, have deserted their homes and are actively engaged in aiding the so-called Confederate States of America and the rebel state government at Richmond, in their attempt to subjugate the good people of this state, but in consequence of the war evidence of their rebellious and criminal acts cannot be obtained: It is, therefore, hereby further enacted, that it shall be lawful for the governor, from time to time, to issue his proclamation declaring any person or persons named therein who he may have good cause to believe have so deserted their homes and are engaged as aforesaid, or are absent from their former places of abode, enemies of this state, unless they shall, within sixty days from the date of said proclamation, take and file in the clerk's office of the circuit court of their county an oath to support the constitution of the United States and the constitution of this state, and thereafter demean themselves as good citizens; which proclamation shall be published in some newspaper printed at the seat of government, and in such other newspaper or newspapers as the governor may direct. And after the expiration of the said sixty days the production of a copy of such proclamation certified by the secretary of the state under the lesser seal of the state, and an affidavit of such proclamation having been published as aforesaid, shall be *prima facie* evidence that the person or persons therein named are enemies of the state within the meaning of this act, unless it be shown that they have taken the oaths above mentioned and so demean themselves. But such persons may nevertheless be proved to be enemies of the state within the meaning of this act by other competent evidence afterwards obtained.

Proclamation by governor declaring persons enemies of the state,

Unless they take an oath.

Certified copy of proclamation to be evidence against them,

Unless they have taken the oath.

Liability to conviction upon other and subsequent evidence.

Attempts to evade this act.

17. Every sale, conveyance or transfer of property, real or personal, or assignment or payment of a debt, and every encumbrance or lien created on any property or debt, and every act done or contract entered into, with intent to evade the forfeiture of any property or claim under this act, or to secure the same, or the price or proceeds thereof, in whole or in part, to or for the benefit of any enemy of the state, shall be void.

18. It shall be the duty of the sheriff, whenever he shall have good cause to believe that any property within his county, belonging to an enemy of the state, has been or is about to be sold, transferred, conveyed, removed or secreted with intent to evade the forfeiture thereof, or secure the same, or the price or proceeds thereof, in whole or in part, to or for the benefit of any enemy of the state, to cause such property to be seized and safely kept until it can be delivered to a commissioner authorized to administer the estate of the enemy to whom such property belonged.

Duty of sheriff in such case.

19. In any suit at law or in equity before a court of record, it shall be a good plea or answer, that the plaintiff was, at the commencement of the suit, an enemy of this state within the meaning of this act; or if the suit be before a justice, the same matter may be proved in defense of the action on reasonable notice given to the plaintiff or his agent, or filed with the justice. On any motion in a court of record if after reasonable notice given to the plaintiff or his attorney, or filed with the clerk of such court, that such a defence would be made, it be shown to the satisfaction of the court that the plaintiff in the motion is an enemy of the state within the meaning of this act, such motion shall be thereupon dismissed by the court; and the circuit court having jurisdiction shall, on bill in chancery and proper evidence in support thereof, enjoin the execution of any judgment, decree or deed of trust, but so far only as it may appear that the same is about to be executed for the benefit of any person who is an enemy of the state within the meaning of this act. Nothing contained in this section shall, however, be construed to interfere with or prevent the recovery of any property or claim by or in behalf of any commissioner appointed under this act.

Plea in court against enemy.

Or proof before justice.

Motion of enemy (when proven such), dismissed,

And execution of judgment arrested.

Recovery by commissioner not affected.

CHAP. 102.—An ACT to incorporate the Bellton and Wetzel County Turnpike Company.

Passed November 14, 1863.

Be it enacted by the Legislature of West Virginia:

1. For the purpose of constructing a turnpike road from Bellton, in the county of Marshall, to the Wetzel county line, near the residence of Thomas W. Gorby, where the county road crosses the county line, it shall be lawful to open books in Bellton for receiving subscriptions to an amount of not over one thousand dollars, to be divided into shares of ten dollars each.

Purpose of the act.

2. The said books shall be opened under the direction of Donald Franklin, Samuel Reed, Michael Piles, Thomas Butler and John Bell, at such times as they, or any three of them, or any agents appointed by any three of them, may select.

Names of commissioners.

3. Whenever twenty shares shall have been subscribed, the subscribers, their executors, administrators, and assigns shall be a body corporate, by the name of "The Bellton and Wetzel County Turnpike Company," in strict conformity to all laws of the state of West

Amount of subscription required to establish company.
Style of company
How governed.

Virginia regulating such companies, with all the powers and subject to all the restrictions imposed by said laws, so far as said laws may be compatible with this act; but said company shall not be required to construct any summer or side road, nor to pave nor cover their said road with stone or gravel, and the width of said road may be not less than fourteen feet, and the grade not to exceed six degrees. Said company shall have the right (in addition to other routes) to locate or construct the said road on or near the location of the present county road.

Width and grade of road.

CHAP. 103.—An ACT to construe and give effect within this State to certain provisions of the Laws of Virginia.

Passed November 14, 1863.

Be it enacted by the Legislature of West Virginia:

Certain expressions in the laws of Virginia construed in reference to this state.

1. Wherever the words "Commonwealth of Virginia," or "State of Virginia," or any expression used to designate the said state occur in any provision of the code of Virginia, second edition, or of the acts of the general assembly thereof, in force within the limits of this state on the nineteenth day of June, eighteen hundred and sixty-three, such provision, in its application to this state, shall be construed as if, instead of the said words or expression, the words "State of West Virginia" were inserted therein. In like manner where the words "oath of fidelity," "general assembly," "attorney for the commonwealth," "auditor of public accounts," "commissioner of the revenue," or any equivalent expressions occur in the said code or acts, they shall be construed, so far as they are applicable to this state, as if the oath to support the constitution of the United States and the constitution of this state, the legislature, prosecuting attorney, auditor and assessor, respectively, were thereby intended. And the said provisions thus construed, if not otherwise repugnant to the constitution of this state or the acts of the legislature, shall be and continue in force as laws of this state. But this act shall not be held applicable to any provision of the said code or laws of Virginia which has been amended and re-enacted or altered by this legislature, nor shall it revive any provision that has been repealed.

Laws amended or altered not affected.

CHAP. 104.—An ACT to incorporate the Burning Spring Turnpike Company.

Passed November 16, 1863.

Be it enacted by the Legislature of West Virginia:

Purpose of act.

1. It shall be lawful to open books for receiving subscriptions to an amount not exceeding five thousand dollars, to be divided into shares of twenty-five dollars each, for the purpose of constructing a graded turnpike road from the termination of the Newark and Elizabethtown turnpike, opposite Elizabethtown in the county of Wirt, to a point at or near the mouth of Burning Spring run, with the privilege of extending the same to a point opposite the mouth of the west fork of the Little Kanawha river, all in the same county.

2. The said books shall be opened at Rathbone City under the direction of Richard D. Petty, John Weare, and Godwin Van Winkle; at Elizabethtown, under the direction of Marcus L. Lockhart, William D. Wilkinson, and Edward C. Hopkins; at Newark, under the direction of Jesse Worley, Thomas P. Fought, and Benjamin F. Stewart; and at Parkersburg, under the direction of J. C. Rathbone, Samuel Newberger, and James W. Dils, or any one or more of them, and at such other places and under the direction of such persons as a majority of the above named commissioners may appoint.

Names and places of commissioners.

3. When forty shares of the said capital stock shall have been subscribed for, the subscribers, their executors, administrators and assigns shall be incorporated into a company by the name and style of the Burning Spring Turnpike Company, subject to the provisions of chapters fifty-six, fifty-seven and sixty-one of the Code of Virginia, second edition; but the said company shall have the privilege of making the said road, or any part thereof, with gravel, sand, clay or plank, as to them shall seem most expedient.

Amount of subscription required to establish company.

Style of company and how governed.

4. The said road shall be opened not more than thirty feet in width and graded not less than twelve feet wide on hill sides and in cuts, and not less than eighteen feet wide in all other places, and shall be constructed at grades nowhere exceeding four degrees of elevation. Tolls may be collected on any continuous section of four miles of the said turnpike road, as soon as the same shall be completed and opened to the public.

Width and grade of road.

Tolls.

5. So much of the first section of the act entitled "An Act to incorporate the Burning Spring and Oil Line Turnpike Company," passed by the general assembly of Virginia, March 11, 1861, as is inconsistent with this act, is hereby repealed.

Law repealed.

CHAP. 105.—An ACT to amend the Act providing for the formation of Corporations and regulating the same.

Passed November 16, 1863.

Be it enacted by the Legislature of West Virginia:

1. Any existing corporation which shall, under the twelfth section of the act providing for the formation of corporations and regulating the same, passed October twenty-sixth, eighteen hundred and sixty-three, accept the provisions of the said act, may change the par value of its shares as the stockholders thereof in general meeting may determine, subject to the regulation contained in the third section of the said act; and in such case, the statement to be filed with the secretary of the state, under the said twelfth section, shall show the proposed par value of each share.

Existing corporations authorized to change the par value of their shares of stock.

2. The stockholders of any corporation which may be formed under the said act or accept the provisions thereof, may, by by-law adopted in general meeting, provide that every share of stock shall have one vote in meetings of stockholders, notwithstanding anything to the contrary contained in the twenty-second section of the said act.

And prescribe its representation.

Increase of capital or change in par value of stock.

3. If the stockholders of any corporation now existing in this state excepting banks of circulation and companies incorporated for the construction of works of internal improvement, or of any corporation which may be formed under the said act, desire to increase the amount of its capital stock or change the par value of its shares, and shall pass in general meeting a resolution to that effect, stating the proposed increase or change, the president of the corporation shall thereupon, under his signature and the common seal of the said corporation certify the resolution to the secretary of the state; and the secretary under his hand and the great seal of this state, shall issue a certificate reciting the said resolution and declaring the proposed increase or change to be authorized in law; which certificate shall be received in all courts and places as legal evidence of the change of the par value of the shares, or the authority to increase the capital stock therein declared. But the capital stock shall not be thereby increased so as to exceed in the whole one million of dollars, and the par value of the shares shall be subject to the regulation contained in the third section of the said act.

How effected.

Limit of capital.

Restriction as to value of stock.

Real estate of existing corporations.

4. The provisions of the twentieth and twenty-first sections of the above mentioned act of October twenty-sixth, eighteen hundred and sixty-three, in relation to the quantity of real estate which the corporations subject to said act may hold, shall be extended so as to apply to all corporations now existing in this state, except banks and internal improvement companies, the charters of which may be altered or amended by the legislature.

CHAP. 106.—An ACT to amend and re-enact the first section of an act entitled, "An Act concerning Oaths and Affirmations," passed June 26, 1863.

Passed November 16, 1863.

Be it enacted by the legislature of West Virginia:

The first section of the act entitled "An Act concerning oaths and affirmations," passed June 26, 1863, shall be amended and re-enacted so as to read as follows:

Amended oath of office.

1. Every person elected or appointed to any office of trust, civil or military, shall, before proceeding to exercise the authority or discharge the duties of the same, take the following oath: "I, A. B., do solemnly swear that I will support the constitution of the United States and the constitution of this state; that I have never voluntarily borne arms against the United States; that I have voluntarily given no aid or comfort to persons engaged in armed hostility thereto, by countenancing, counselling or encouraging them in the same; that I have not sought, accepted nor attempted to exercise the functions of any office whatever, under any authority in hostility to the United States; that I have not yielded a voluntary support to any pretended government, authority, power or constitution within the United States, hostile or inimical thereto; and that I take this obligation freely, without any mental reservation or purpose of evasion."

CHAP. 107.—An ACT to provide for Taxes on process in Suits, Official Seals and Deeds.

Passed November 16, 1863.

Be it enacted by the Legislature of West Virginia:

Suits, appeals, &c., to be taxed.

1. There shall be a tax paid when suit is commenced in a circuit court; or when an appeal, writ of error, or supersedeas is commenced in the supreme court of appeals.

Seals of public officers.

2. There shall be a tax when the seal of a court, a recorder or notary public, or the seal of the state, is annexed to any paper, except in cases hereinafter provided for.

In what cases seals not to be taxed.

3. No tax shall be charged when a seal is annexed to any paper or document to be used in obtaining the benefit of a pension, revolutionary claim, money due on account of military services, or land bounty, under any act of congress, or any law of this or any other state, or when a seal is annexed by a notary public to an affidavit or deposition; or when the seal of the state is annexed to any commission or certificate required by the "Act to regulate elections by the people."

Deeds.

4. There shall be a tax on deeds; and no deed shall be admitted to record until the tax thereon is paid to the recorder; except on deeds conveying land as a site for a public school house, church, parsonage, cemetery or burial ground, on which there shall be no tax.

To whom such taxes to be paid.

5. The taxes on process and on seals of courts shall be paid to the clerks, respectively, of the courts from which such process is issued, or whose seal is used. The tax on the seal of a recorder shall be paid to such recorder. The tax on the seal of a notary public shall be paid to such notary; and that on the seal of the state to the secretary of the state.

Account of same to be returned quarterly.

In what cases paid to county treasury.

In what cases to state treasury.

6. The clerk of each circuit court, and every notary public and recorder, shall make out quarterly, on the first days of January, April, July and October, respectively, in each year, an account of the taxes received by him. Each of the said officers shall swear to the correctness of the said account; and shall pay the amount thereof for county purposes to the treasurer of the several counties wherein the said taxes have accrued, deducting therefrom a commission of three per centum for receiving and paying the same. The secretary of the state and the clerk of the supreme court of appeals shall make their returns quarterly, under oath, to the auditor, on the days above specified, and pay the amount appearing thereby to be due into the treasury of the state, after deducting a commission of three per centum.

Penalty for failure to return the accounts.

7. If any of the said officers fail to render such accounts within thirty days after they are respectively required to do so, there shall be a forfeiture as follows: A clerk so failing shall forfeit two hundred dollars, a notary public one hundred dollars, a recorder fifty dollars, and the secretary of the state one hundred dollars; and for every month that such failure may continue thereafter, there shall be an additional forfeiture of ten per centum of the amount thereof. For any such failure, motions may be repeated from time to time so long as

it continues against any of the officers and their sureties in the circuit court of the county in which the officer resides; but a motion against the secretary of the state, or the clerk of the supreme court of appeals, shall be in the circuit court of the county in which the seat of government is.

Pay of delinquent withheld.

8. None of the aforesaid officers shall receive any money from the treasury into which he is required to make such payment, until he shall have rendered such accounts and made such payments as are above required.

Chap. 39 of code repealed.

9. Chapter thirty-nine of the code of Virginia, second edition, is hereby repealed.

CHAP. 108.—An ACT providing for rebuilding the bridge across Buffalo Creek, at Barnesville, in Marion county.

Passed November 18, 1863.

Be it enacted by the Legislature of West Virginia:

Commissioners.

1. The superintendent of the Maryland and Ohio river turnpike, and two citizens of Marion county to be appointed by the governor, are hereby authorized to act as commissioners to contract for and superintend the rebuilding of the bridge across Buffalo creek, at Barnesville, on the Maryland and Ohio river turnpike. A majority of said commissioners can act.

Appropriation.

2. The sum of eighteen hundred dollars is hereby appropriated, out of any money in the treasury not otherwise appropriated, for the rebuilding of the said bridge, and for the purpose of paying for the said work as it progresses. The said commissioners are authorized to draw on the auditor, who is hereby required to pay such orders to the amount of the said appropriation.

CHAP. 109.—An ACT providing for the payment of certain Militia Claims allowed by Regimental Courts.

Passed November 19, 1863.

Be it enacted by the Legislature of West Virginia:

What claims to be paid.

The auditor is hereby required to pay all militia claims for services rendered since June twentieth, eighteen hundred and sixty-one, as musician, adjutant, provost marshal, and regimental clerk, which have been allowed by regimental courts of the several regiments within the bounds of this state, and are duly certified by the regimental clerks, and countersigned by the commandants of regiments, according to law.

CHAP. 110.—An ACT relating to the Militia.

Passed November 21, 1863.

Be it enacted by the Legislature of West Virginia:

Divisions and brigades.

1. There shall be two divisions and eight brigades of the militia of this state.

First division. First brigade. Second brigade. Third brigade. Fourth brigade.

2. The first division shall be composed of the first, second, third and fourth brigades, to wit: Hancock, Brooke, Ohio and Marshall shall be the first brigade; Tyler, Wood, Ritchie, Pleasants, Doddridge, Wirt and Wetzel the second brigade; Monongalia, Marion, Harrison, Taylor and Preston the third brigade; Morgan, Berkeley, Jefferson, Hampshire, Hardy, Pendleton, Webster, Randolph and Tucker the fourth brigade.

Second division. Fifth brigade. Sixth brigade. Seventh brigade. Eighth brigade.

3. The second division shall be composed of the fifth, sixth, seventh and eighth brigades, to wit: Lewis, Upshur, Gilmer, Calhoun, Braxton and Barbour shall compose the fifth brigade; Monroe, Greenbrier, Pocahontas, Fayette, Clay and Nicholas the sixth brigade, Kanawha, Mason, Cabell, Wayne, Jackson, Roane and Putnam the seventh brigade; Logan, Boone, Wyoming, McDowell, Mercer and Raleigh the eighth brigade.

Authority of governor.

4. The governor shall have power to remove any officer of the militia that now is or that may be hereafter commissioned, and may refuse to commission any officer hereafter elected, upon satisfactory evidence that such officer is disloyal, intemperate or incompetent, or for any behavior unbecoming an officer.

CHAP. 111.—An ACT relating to Convicts.

Passed November 25, 1863.

Be it enacted by the Legislature of West Virginia:

Governor authorized to remove convicts to penitentiaries of other states.

The governor is hereby authorized to have removed to the penitentiary of any other state of the Union, if he can negotiate with the proper authorities of such state on satisfactory terms, all convicts now in the jails of this state, who have been convicted under the re-organized government of Virginia or the government of this state, and all who may hereafter be convicted in this state, until arrangements have been made by it for their safe keeping within its limits.

CHAP 112.—An ACT regulating Contested Elections.

Passed November 27, 1863.

Be it enacted by the Legislature of West Virginia:

Notice of intention to contest. With list of votes objected to and contended for. Return notice with like list.

1. Any person intending to contest the election of another as senator or delegate shall, within twenty-one days after the election, give him notice thereof in writing, and a list of the votes he will dispute, with his objections to each, and of the votes rejected for which he will contend. If the contestant object to the legality of the election or the qualifications of the person returned, the notice shall set forth the facts on which such objection is founded. The person whose election is contested shall, within fourteen days after he receives such notice, deliver to the contestant a like list of the votes he will dispute, and of his objections to each, and of the rejected votes he will claim; and if he has any objection to the qualifications of the contestant, shall specify in such notice the facts on which the objection is found-

Notices to be sworn to.

ed. Each party shall append to his notice his affidavit that the matters therein set forth, so far as they are stated of his own knowledge, are true, and so far as they are stated on the information of others, he believes them to be true.

Time of giving notice in case of special election to fill vacancy.

2. Where, however, such contest arises upon a special election to fill a vacancy held at any other time than the fourth Thursday of October, the notice, with specifications and affidavit as above, shall be given by the contestant within ten days after the election, and by the party whose election is contested within five days after receiving such notice.

Additional notice.

3. If new facts be discovered by either party, after he has given notice as aforesaid, he may give an additional notice or notices to his adversary, with specifications and affidavit as above prescribed; but no testimony shall be taken concerning the matters alleged in such additional notice or notices, until five days at least after the delivery thereof to the opposite party.

Time of taking depositions.

Notice of each deposition.

Specifications of such notice.

Before whom depositions taken.

And how disposed of.

4. Subject to the provision contained in the last section, either party may begin to take depositions at any time after the delivery of the original notice by the contestant. But reasonable notice of every such deposition shall be given in the manner prescribed in the one hundred and sixty-seventh chapter of the Code of Virginia, second edition; and every such notice shall specify the names of the witnesses to be examined, and the particular vote or votes about which they will be interrogated, or whether they are to be examined respecting the legality of the election, or the qualifications of the contestant or person returned. The depositions may be taken before a justice, notary or any officer authorized to take depositions in civil suits; and the officer before whom they are taken shall certify and seal up the same, and endorse his name across the place where they are sealed, and address and transmit the same by mail or otherwise to the clerk of the branch in which the seat is contested. When the petition of the contestant is referred to a committee, the clerk shall deliver the depositions to such committee for examination and report.

Witnesses.

5. Subpœnas for witnesses shall be issued by the clerks of the circuit courts, upon application of either party; and the witnesses so summoned shall be entitled to the same allowances and privileges, and be subject to the same penalties as witnesses summoned to attend the said courts.

Time of completing depositions in case of regular elections.

In case of special election.

6. If the contest arise respecting any election held on the fourth Thursday of October, the parties shall finish taking depositions ten days at least before the third Tuesday of January next following. But if it arise upon a special election to fill a vacancy held at any other time, they shall finish within twenty-one days after the election.

7. Neither party shall have the benefit of any deposition taken otherwise than as aforesaid, unless further time be given by resolution of the proper branch of the Legislature.

Petition of contestant to Legislature.

8. The petition of the contestant shall be presented to the proper branch of the legislature within ten days after its meeting, if the dis-

puted election was held at the regular annual period; or if it was a special election to fill a vacancy, within twenty-five days after such election.

Case of tie.

9. If it be ascertained that an equal number of legal votes was given for the petitioner and the person returned, the seat shall be declared vacant, and a writ of election be issued to fill the vacancy as in other cases.

Time for giving notice in contests under election held October 22, 1863.

10. If any contest arise respecting the election of any person as senator or delegate, at the election held on the fourth Thursday of October last, it shall be governed by the provisions above contained, except that the contestant may give his notice within twenty-one days after the passage of this act, instead of twenty-one days after the election.

Time for giving notice in contest for state officers.

11. If the election of governor, secretary of the state, treasurer, auditor, attorney general, judge of the supreme court of appeals, or judge of a circuit, be contested, the contestant must give notice, with specifications and affidavit as aforesaid, to the person whose election is contested, within ten days after the result is officially declared; and within ten days thereafter the return notice must be given to the contestant. The parties shall finish taking depositions within forty days after the last mentioned notice is delivered. The depositions shall be transmitted to the clerk of the house of delegates, to be delivered by him to the joint committee or special court hereinafter provided for. In other respects, the regulations herein contained respecting contests for seats in the legislature shall be observed, so far as they are applicable.

When depositions in such case must be completed.

Other regulations.

Trial of contest for office of governor.

12. Where the election of governor is contested, the petition of the contestant and the depositions shall be referred to a joint committee of the two branches, for examination and report; which committee shall consist of two senators elected by ballot by that branch, and three delegates elected by ballot by the house of delegates. The contest shall be determined by the legislature, both branches thereof sitting in joint session in the hall of the house of delegates, the speaker of which house shall preside.

Special court in case of contest for other state offices.

13. Where the election of secretary of the state, treasurer, auditor, attorney general, or a judge of the supreme court of appeals or circuit court is contested, the case shall be heard and decided by a special court to be constituted as follows: The person declared elected shall select one, the contestant another, and the governor a third person, who shall preside in the said court; and the three, or any two of them, shall meet at a time and place to be appointed by the governor, and being first duly sworn impartially to decide according to the law and the truth upon the petition, returns and evidence to be submitted to them, shall proceed to hear and determine the case and certify their decision therein to the governor. They shall be entitled to the same pay and mileage as members of the legislature, to be paid out of the treasury of the state; but their compensation shall not in any case exceed forty-five dollars each, exclusive of mileage.

Costs, How awarded. How ascertained. How recovered.

14. The costs of every contested election shall include only the expenses of serving notices, taking the depositions and the allowances to witnesses; and shall be noted at the foot of every deposition or set of depositions by the person taking the same. If the contestant fail in setting aside the election, there shall be awarded against him the amount of such costs incurred or expended by the person who was returned or declared elected. Otherwise, each party shall pay his own costs; unless it appears that the person returned or declared elected was guilty of fraud or malpractice in the election, or in procuring such return or declaration, in which case costs shall be awarded against him in favor of the contestant. Where costs are awarded in favor of either party, the amount thereof shall be ascertained under direction of the branch, joint session or court which decides the case, and a certificate thereof authenticated by the signature of the presiding officer, shall be delivered to the party in whose favor they are awarded, which certificate shall have the force of a judgment; and if such costs be not paid within ten days after the date thereof, the clerk of the circuit court of the county in which the party against whom the costs were awarded resides, may issue execution on such certificate upon its delivery to him, in like manner as upon a judgment of the said circuit court.

Contests for county and township offices.

15. If the election or qualifications of any county or township officer be contested, the question shall be decided by the board of supervisors of the county, under the regulations prescribed in the thirty-first and thirty-second sections of the act passed November thirteenth, eighteen hundred and sixty-three, entitled "an act to regulate elections by the people."

If upon election heretofore held.

16. If such contest arise respecting any election heretofore held for any county or township office, the first board of supervisors elected for the county may proceed to hear and determine the same at a meeting or meetings to be held for the purpose, at any time within thirty days after the election of the said board.

Law repealed.

17. The tenth chapter of the code of Virginia, second edition, is hereby repealed.

Chap. 113.—An ACT concerning Licenses.

Passed November 28, 1863.

Be it enacted by the Legislature of West Virginia:

For what licenses shall issue. Selling liquors at retail. Bowling alley or billiards. Circus, menagerie, theatre, public show.

1. No person shall, without a license therefor, keep a hotel or tavern; or sell drinks or refreshments at a public theatre; or sell or offer or expose for sale, at retail, spirituous liquors, wines, porter, ale or beer, or any drink of like nature, and selling in less quantities than five gallons shall be deemed selling at retail; or keep for public use or resort a bowling alley or saloon, billiard table or any table of like kind; or exhibit any circus, menagerie, theatrical performance or public show to which admission is obtained for money or other re-

ward; or practise in this state, if not a resident therein, the profession of dentist, or the art or business of daguerrean or photographist, or other art or business of like kind. Nor shall any person, without a license therefor, sell, or offer or expose for sale, any patent right, except where the patentee is a resident of this state; or act as a hawker and peddler, or itinerant vender of goods, wares or merchandize, or as auctioneer; or practise the business or calling of stock or other broker in buying or selling for others, stocks, securities or property of any kind, for a commission or reward; or act as a broker or private banker in carrying on for himself or any other person or persons the business of buying or selling uncurrent money or funds, or exchanging one kind of money or funds for another. Any person violating this section shall, for every such offence, forfeit not less than ten nor more than one hundred dollars.

Non-resident dentist or photographist.

Patent rights.

Hawker and peddler.

Stock broker.

Private banker.

Money and exchange broker.

Penalty.

2. This act shall not be construed to require license to keep a boarding-house or boarding-schoool where boarders are not received for less than three days; or to require any person having license to sell spirituous liquors or wines at retail, to obtain another license to sell porter, ale or beer, or any drink of like nature, at the same place; or to prohibit a druggist from selling alcohol, spirituous liquors or wine for medicinal or manufacturing purposes; or to require any incorporated bank, savings bank or savings institution to obtain license as a broker or private banker; or to require any resident of this state to obtain license to exhibit any work or production of his own invention or skill; or to require license for any school exhibition, literary or scientific lecture, or musical concert; or to affect any person furnishing refreshments at any public dinner, fair, festival or celebration; or to require any trustee selling property, or any officer or commissioner selling property under an order, decree or execution of any court or justice, to take out license therefor.

Proviso respecting boarding houses, and retailers of liquors,

And druggists,

And bankers as brokers,

And residents of state exhibiting their own work,

And school exhibitions; lectures and concerts; and refreshments at public dinner and other places.

And trustees, &c; selling property.

3. Where the council of a city or town is, by its charter or any law of this state, authorized to grant or refuse licenses for any particular purpose, no license issued under this act shall be deemed to authorize any person to do any act, or carry on any business, calling or profession within the corporate limits of such city or town without having obtained license therefor as required by the by-laws or ordinances of such city or town, but all licenses granted under such by-laws or ordinances shall be assessed with and pay to the state the same taxes as other licenses of like kind, in addition to any tax payable thereon to such city or town.

Where council of city or town authorized to grant license, no other license valid.

State tax on licenses granted by city or town.

4. Licenses to keep a hotel or tavern; or to sell drinks or refreshments at a public theatre; or to sell at retail spirituous liquors, wines, porter, ale, beer, or any drink of like nature; or to keep for public use or resort a bowling alley or saloon, billiard table or table of like kind, shall be issued only when authorized by resolution of the board of supervisors of the county, except where the council of a city or town are authorized, as aforesaid, to grant such licenses, in which case they shall be issued only when authorized by such council.

What licenses to be issued only when authorized by board of supervisors.

When licenses issued only by council of city or town.

License to keep a hotel or retail liquors, how procured.

5. Every person desiring license to keep a hotel or tavern, or to sell at retail spirituous liquors, wines, porter, ale, beer, or any drink of like nature, where such license is to be authorized by a board of supervisors under the preceding section, shall procure a certificate from the said board that he is of good moral character and demeanor, and not of intemperate habits, and in all cases where a license grants the privilege to sell spirituous liquors, wines, or any drink of like nature, shall execute a bond, with security, to be approved by the said board, in a penalty of not less than five hundred nor more than one thousand dollars, conditioned that he will not permit any person to drink to intoxication on any premises controlled by such applicant, and will not sell or furnish any intoxicating drink to any person intoxicated at the time, or who is known to have the habit of becoming intoxicated, or to any person under the age of twenty-one years, or on Sunday. If such certificate be applied for and refused, the refusal shall be entered of record, and such certificate shall not be afterwards granted to the applicant before the meeting of the board in the succeeding May or June.

Bond.

Refusal.

When suit may be instituted on bond.

Amount to be recovered for use of county.

6. Upon credible complaint in writing made to him, or on his own knowledge, of any breach of the condition of such bond as is mentioned in the fifth section, the prosecuting attorney of the county shall, from time to time, put the same in suit, and recover for each breach the sum of ten dollars for the use of the county, until the penalty is exhausted.

Revocation of licenses,

On reasonable notice.

7. Upon the petition in writing of any inhabitant of the county, city or town, any license authorized according to the fourth section of this act, may be revoked by the board or council who authorized it, on reasonable notice to the person holding the same; and thereafter such license shall be of no effect to protect the person holding the same from any fine or forfeiture imposed by the first section of this act.

Agents of express or foreign insurance companies acting without license, fined.

8. Every person who, after the first day of February in any year, shall commence and carry on any express business for compensation, or act as agent for any express company, or act as agent of any foreign insurance company, without a license therefor, shall, for every such offence, forfeit not less than five dollars nor more than fifty dollars. Such license shall expire on the first day of February next after the date thereof, and the tax thereon shall be in proportion to the time it has to run from the granting thereof. If the business or agency be continued after the expiration of such license, no further license shall be necessary, but such business or agency shall be assessed and listed for taxation according to the provisions of the act passed at the present session, entitled "An Act to provide for the assessment of taxes.

When such license to expire.
Tax thereon to be in proportion to time.
How such business is to be taxed after first year

Assessors to list persons engaged in business requiring license.

9. Every assessor shall, annually, ascertain and list all persons in his district who are engaged or desire to engage in any business, calling or profession for which license is required by law; and it shall be the duty of every such person to apply to the assessor and cause himself to be properly listed; and if the case be one in which the

Such persons to report to assessor

license is to be authorized by the board of supervisors of the county or the council of the city or town, it shall further be his duty to deliver to the assessor a copy of the resolution of the board or council authorizing the same, authenticated by the signature of their clerk. The assessor shall deliver to every person in his district, from whom license is required by law, and who, where this is necessary, shall deliver a copy of the resolution of the board or council authorizing such license, a certificate of the license to be obtained, and of the amount of tax to be paid thereon to the state. Such certificate shall be produced to the officer to whom the tax is to be paid, and his receipt for the tax, written thereon, shall be a sufficient license to the person and for the purpose mentioned in the said certificate, subject to the exception mentioned in the third section of this act. The tax due the state shall be paid to the officer authorized at the time to collect the state taxes assessed for that year in the county.

Resolution of supervisors or council of city or town to be delivered to assessor.

Certificate of license to be produced to collecting officer, whose receipt thereon to constitute license.

Exception.

Payment of state tax on license.

10. Every certificate issued by an assessor as aforesaid, if it be to authorize the keeping of a hotel or tavern, or a bowling alley or saloon, billiard table or any table of like kind for public use or resort, shall specify the building in which it is to be kept; and to keep the same at a different place shall be deemed a violation of the first section of this act. Every certificate to sell at retail spirituous liquors, wines, porter, ale or beer, or any drink of like nature, or to sell drinks or refreshments at a public theatre, shall designate the house where they are to be sold, and a sale at any other place shall be held to be a sale without license. Other licenses shall be deemed co-extensive with the county, but of no effect beyond the limits of such county.

What certificate of assessor to specify.

Place of sale named in certificate not to be changed in certain cases.

Other licenses co-extensive with the county.

11. Where an assessor desires to obtain license, he shall procure a certificate therefor from the board of supervisors of the county, or council of the city or town, as the case may be, and produce the same and pay the tax thereon to the proper officer, whose receipt thereon shall have the same effect as in other cases.

How an assessor can obtain license.

12. The state tax on a license to keep a hotel or tavern shall be determined by the yearly value of the premises occupied for that purpose. The assessor may require the proprietor and tenants, if the premises be leased or rented, to declare on oath the amount of rent agreed to be paid, and if either of them refuse to do so, he shall forfeit not less than twenty nor more than one hundred dollars. From such information, if obtained, and a comparison of the premises, where it is in his power, with other premises actually leased or rented, and other circumstances affecting the value, the assessor shall estimate the yearly value to the best of his judgment, taking into consideration not only the house itself, but all the lots, gardens, stables, outhouses, booths and watering places held and used therewith, but excluding the contiguous farm and farm houses.

How the state tax on license to keep a hotel determined.

Assessor to estimate yearly value.

Contiguous farm excluded from valuation.

13. If the person desiring a license of any kind be dissatisfied with the valuation of the assessor or the amount of state tax to be paid as stated in the assessor's certificate, he may appeal to the board of supervisors of the county, whose decision shall be final. If the decision

Appeal from assessor's valuation.

To board of supervisors.

Costs of appeal in case of failure.

be that the valuation or amount of tax should not be reduced, the person so appealing shall pay five dollars to the county treasury as costs of such appeal.

State license a personal privilege,

But may be transferred.

Bond to be given by the person to whom transferred.

Clerk of board or council to report transfer to assessor.

14. A license from the state shall be considered a personal privilege; but the person to whom such license has been granted may transfer the unexpired term thereof, with the assent of the board of supervisors of the county or the council of the city or town who authorized it to be issued, if the license be one of those mentioned in the fourth section of this act, and the person to whom it is transferred shall give bonds as required by the fifth section, and in other cases, by procuring from the assessor an endorsement on the license, showing to whom it has been transferred. Where such transfer is made with the assent of the board or council, their clerk shall endorse a memorandum of the transfer on the license, and forthwith make report thereof to the assessor.

Place where privilege to be exercised may be changed,

By the board of supervisors or council of city or town,

Or by assessor.

Clerk of board or council to report change of place to assessor.

15. If a person having license from the state to keep a hotel or tavern, or a bowling alley or saloon, billiard table or any table of like kind, in a particular building, or to sell at a specified house, as provided in the tenth section of this act, desires to keep the same, or sell, at a different place in the same county, the board of supervisors of the county, or council of the city or town, who authorized the license to be issued, may, if it be one of those specified in the fourth section of this act, and the assessor may in other cases authorize such license to be altered accordingly, and a memorandum of the change of place to be endorsed thereon. When such alteration is authorized by the board or council, their clerk shall forthwith make report of the same to the assessor.

Fee to clerk for transfer or change.

Clerk to prepare bond.

Fee to assessor for transfer or change.

16. The applicant shall pay to the clerk of the board of supervisors a fee of fifty cents for every license, transfer or alteration of a license granted or authorized by the said board; in consideration of which it shall be the duty of the clerk to prepare the bond required by the fifth section of this act. The assessor shall also, in every case, be entitled to a fee of fifty cents for each license, transfer or alteration of a license, to be paid by the person obtaining the same.

Duration of state license to keep bowling alley or billiard table.

Tax when for four months.

17. A license from the state to keep, for public use or resort, a bowling alley or saloon, billiard table or any table of like kind, may commence at any time in the year, and be for the period of either four or twelve months from the time of granting the same. If for four months, the tax shall be one-half of the annual tax.

State tax on theatres,

And on a circus, menagerie or public show.

Sundry state licenses.

18. There shall be a state tax per week on theatrical performances to which admission is obtained for money or other reward; and a state tax on every circus, menagerie or public show, to which admission is obtained as aforesaid, for each day's exhibition. The state license to authorize a person not a resident of this state to practise the profession of dentist, or the art or business of daguerrean, photographist or other art or business of like nature; the state license to sell patent rights, and state licenses to hawkers or peddlers or itinerant venders of goods, wares or merchandise, or to auctioneers, may com-

mence at any time, and be for a year or one or more months, but not for a fraction of a month. If for less than a year, the state tax for every month shall be one eighth of the annual tax. Their commencement and duration.

19. All the state licenses, except those mentioned in the last two sections and in the eighth section, shall expire on the thirtieth day of June; and if granted for a less term than one year, the state tax thereon shall bear such proportion to the whole annual tax, as the space of time between granting the same, and the thirtieth of June thereafter bears to the whole year. General provision as to expiration and rate of state licenses.

20. The assessor shall commence his assessment of such licenses as expire on the thirtieth day of June, at such time as to enable him to complete the same and deliver to the sheriff or collector full lists thereof before that day. When assessor to commence his assessment.

21. As he progresses with the assessment, the assessor, at intervals of not exceeding fifteen days, shall make fair classified lists of all persons required by law to pay taxes to the state upon licenses, and deliver such lists to the sheriff or collector for his guide in collecting the taxes imposed on such licenses. Delivery of lists of licenses to sheriff. He shall return to the auditor, and to the clerk of the board of supervisors of the county a list of all such licenses, that is to say: A list of such as are granted on or after the first day of November, and before the first day of July following, shall be returned on or before the tenth day of July; and a list of such as are granted on or after the first day of July, and before the first day of November following, shall be returned on or before the tenth day of November. Return of lists to auditor and clerk of supervisors. Time of such return. Such lists shall specify the date of each license, for what it was granted, the name of the person to whom granted, the amount of tax, to whom paid, and the data or information on which the tax was assessed. What lists to specify. If no license has been issued, he shall return that fact at the time prescribed for the return of his list of licenses. If any assessor fail to perform any duty required of him by this section, without a reasonable excuse therefor, he shall forfeit not less than twenty nor more than one hundred dollars for every such offense. Penalty for failure of assessor.

22. Any such list signed by an assessor, in which shall be stated the amount of state tax paid for any license and to whom paid, shall be evidence against the sheriff or collector to charge him with the amount so stated to have been paid to him. Lists to be evidence against sheriff or collector.

23. The sheriff or other collector shall be authorized and required to distrain immediately for the amount with which any person may have been assessed by the assessor upon any state license under the provisions of this act, Collector to distrain for taxes on licenses, and to sell upon ten days' notice, so much of such person's property subject to distress as may be necessary to pay the taxes so assessed. And sell upon ten days' notice.

24. No sheriff or collector shall receive from any person a license tax unless he has first received the certificate of the assessor, showing the amount with which such person has been assessed, or the list required to be furnished to such sheriff or collector by the assessor. Collector not to receive tax before he has received the assessor's certificate.

When collector to account for state taxes on licenses.

25. Every sheriff or collector shall account for and pay into the treasury the state taxes assessed on licenses at the following times: The taxes assessed on or after the first day of November, and before the first day of July following, shall be accounted for and paid on or before the thirty-first day of the said month of July; and the taxes assessed on or after the first day of July, and before the first day of November following, shall be accounted for and paid on or before the fifteenth day of December following.

Auditor in certain cases to file accounts against collecting officer.

26. If the state taxes on licenses required to be paid on or before the thirty-first day of July, be not then paid, the auditor shall, within three months after such failure, file in the clerk's office of the circuit court of the county in which the seat of government is located, with the clerk thereof, an accurate account of the amount with which such sheriff or collector may be chargeable on account of such taxes; and thereupon the clerk shall enter up a judgment against such sheriff or collector and his securities for the amount wherewith he is so chargeable, with lawful interest from the time of such failure until the payment thereof, and fifteen per centum damages in addition thereto; which judgment shall have the same validity and be subject in all respects to the like proceedings thereupon as if it had been rendered by the court.

Clerk to enter judgment against collecting officer and his securities.

Damages.

Validity of judgment.

Redress for person aggrieved by judgment.

27. But any person aggrieved by such judgment, may apply to the circuit court of the county in which the seat of government is located, within six months thereafter, to set aside said judgment and try said cause, which such court may do upon such terms as it may prescribe. Such judgment, if entered against any obligor of the bond of the sheriff or collector, who is dead at the time of the entry of such judgment, shall not be impaired thereby; and as to the party who may have died, it shall operate to all intents and purposes as a judgment against the personal representative of such deceased party.

Judgment not to be impaired if entered against deceased obligor of the collecting officers bond.

Proceedings when collecting officer is unable to find property.

28. When a sheriff or other collector is unable to find property out of which to make taxes imposed upon persons who may have been assessed with a license, such sheriff or collector may return such persons as insolvents, subject to all the laws in relation to uncollected taxes.

Commissions for collecting taxes on license.

29. Every sheriff or collector receiving taxes on licenses under this chapter shall be allowed a commission of two per centum, for his collections on the first five thousand dollars, and one per centum on any excess over that sum; and if he shall punctually pay the same into the treasury within the time prescribed by law, he shall be allowed an additional compensation of two per centum.

How penalties are recoverable.

30. The penalties prescribed by this act, except those recoverable in the circuit court of the county in which the seat of government is located, by existing laws, shall be recoverable by action of debt, presentment, indictment or information.

In what name and county action may be brought.

31. Such action of debt may be brought in the name of the state, either in the county wherein the offense was committed or wherein the offender resides.

32. In the action of debt, bail shall be required as a matter of right, and the defendant arrested under a capias hereby authorized, may, at any time pending the case, give bond, with sufficient security, to the officer making the arrest, who may thereupon discharge him. Such bond shall be conditioned for the appearance of the party to answer the action and to abide by and satisfy the judgment of the court; and shall be returned by such officer to the clerk of the court from which the capias issued, to be filed and preserved by the clerk of such court. If deemed necessary, an attachment may also be issued, as now authorized in other cases, except that an affidavit and a bond shall not be required of the state or her agents in the proceedings hereby authorized.

Bail.

Bond of defendant under arrest. Condition of bond.

Where bond to be returned.

Attachment may issue.

Affidavit and bond not required of state.

33. In addition to the general duties required of the prosecuting attorney in each county, he shall, upon his own motion, or upon the application of any revenue officer, of any conservator of the peace, or of any person interested, institute prosecutions or actions upon all the offenses herein provided.

Prosecuting attorneys to institute actions upon offenses.

34. It shall be the duty of the assessors, council and board of supervisors, to whom application shall be made for licenses, to require from each and every person who shall apply for license, an oath to support the constitution of the United States and the constitution of this state.

Oath of applicants for license.

CHAP. 114.—An ACT confirming the election of William E. Allison.

Passed November 30, 1863.

Be it enacted by the Legislature of West Virginia:

The election of William E. Allison, (at the election held October twenty-second, eighteen hundred and sixty-three,) to the office of recorder, in the county of Hancock, is hereby legalized.

Election of recorder in Hancock legalized.

CHAP. 115.—An ACT for the Education and Support of the Blind.

Passed December 1, 1863.

Be it enacted by the Legislature of West Virginia:

The governor of this state is hereby directed to contract with some humane asylum, outside of this state, for the care, education and support of the indigent blind of this state, who are unable to educate themselves, or whose parents are unable to do it for them; and the sum of three thousand dollars is hereby appropriated for that purpose out of any money in the treasury.

Governor directed to have blind maintained temporarily without the state.

Appropriation.

CHAP. 116.—An ACT to authorize the Kanawha Board to borrow Money.

Passed December 2, 1863.

Be it enacted by the Legislature of West Virginia:

1. The Kanawha Board is hereby authorized to borrow any sum not exceeding fifty thousand dollars, for the more speedy completion of the

Sum limited.

Pledge of property. improvements on the Kanawha river; and they are empowered to pledge the tolls and movable property under their control for the Rate of interest. payment of interest on the said loan and the repayment of the principal. The rate of interest to be paid by them shall not exceed eight Proviso. per centum per annum. Nothing in this act contained shall be construed to bind the state for any liabilities incurred by the said board in pursuance of this act.

CHAP. 117.—An ACT to incorporate the Sandy Valley Coal Railway Company.

Passed December 2, 1863.

Be it enacted by the Legislature of West Virginia:

Names of corporators. 1. C. W. Ricketson, Chas. Knapp, Laban T. Moore, Wm. Ratcliff, R. B. Bowler, W. O. Leslie, Larz Anderson, Geo. Shoenberger, John McVay, Wm. Bagaley, T. J. Simpson, Wm. K. Pendleton, and their associates, successors and assigns, and all who shall become stockholders, whenever five thousand shares of the capital stock as hereinafter provided shall have been subscribed, are hereby created and made a body politic and corporate, by the name, style and title of the Style of company "Sandy Valley Coal Railway Company;" and by that name shall have Powers of company. perpetual succession, and shall be in law and equity capable of sueing and being sued, pleading and being impleaded in all courts of law and equity whatsoever, and also of contracting and being contracted with relative to the business and objects of the said corporation; and they may have a common seal, and may change and alter the same at pleasure, and shall have full power to make rules and by-laws for the regulation and management of said corporation, not inconsistent with the laws of this state or of the United States.

Capital stock. 2. The capital stock of said company shall be one million five hundred thousand dollars, divided into shares of one hundred dollars each; books to be opened by the said corporators, or any three of Times and places of receiving subscriptions. them, to receive subscriptions to the said capital stock, within twelve months after the passage of this act, at Cincinnati, Wheeling, Pittsburg, or such other places as they may designate.

Board of directors. 3. The business affairs of said company shall be managed by a board of five directors, to be elected annually by the stockholders; and the said board, at their first meeting after each election, shall choose one of their number as president of said board, and such other officers as they may deem necessary for the management of the business affairs Representation of stock. of said company. At all elections for officers or otherwise, each stockholder shall be entitled to one vote for every share of stock held by him or her, and in case of a vacancy occurring in the board of directors by death, resignation or otherwise, such vacancy shall be filled by the board from among the stockholders.

Authority of company to construct railway. 4. The said company, by its president, directors, agents and servants, shall have the right and power to lay out, build and construct a railway, with a single or double track, with all necessary switches and turnouts, commencing in Wayne county, on the Ohio river, near the mouth of Sandy, and extending by the nearest and best route along the valley of said Sandy, and along the Tug Fork of said river, within the limits of this state, except and only where it is impracticable to construct said road therein, to a point opposite the mouth of Pond creek, in Logan county, with full power to lay out and construct lateral branches to said railway; and should the directors of said company deem it necessary or expedient to construct a bridge or viaduct over the Big Sandy river, or the Tug Fork of said river, it is hereby declared lawful for them to do so, without obstructing navigation; provided, however, that the consent of the legislature of Kentucky shall be first had and obtained thereto. And the said railway and its lateral branches, when completed, shall be a public highway for the conveyance of passengers and the transportation of freight of all descriptions, subject to the provisions of the seventeenth, eighteenth, nineteenth, and twentieth sections of chapter sixty-one of the Code of Virginia, second edition. And the said company shall also permit, upon such terms as may be agreed upon by it, any persons owning lands adjacent to or near the line of said road to construct branch roads to intersect by switches with the main stem of said railroad, for the purpose of transporting coal and other minerals, and timber and other materials, from such lands to the said railroad.

Same to be a public highway.

Land owners allowed to construct branch roads.

5. The said company are hereby authorized to borrow any amount of money not exceeding one million dollars, and to issue bonds, with coupons attached, bearing any rate of interest not exceeding seven per centum per annum, and as security for the payment of the same, to execute a mortgage or mortgages upon their corporate franchises and all their property, real, personal or mixed.

Authority of company to borrow money.

6. The said company are hereby authorized and empowered to purchase, hold, use and possess in fee simple, or any less right, any quantity of land not exceeding fifty thousand acres, and the same to sell, lease, mortgage or otherwise dispose of at their pleasure, and make proper conveyances therefor.

And purchase and own land.

7. For the purpose of laying out and locating their railway and branches, the president and directors, with their engineers and agents, shall have full power and authority to enter upon, and pass through and over any lands, curtilages excepted, on the contemplated route, and to occupy the same so long as they may deem necessary for locating the said road. But the said company, in locating the said railway, branches, depots or stations, shall not throw open any fences or enclosures on any land, or in any way injure the property of the owner or occupier, without his consent, or invade the dwelling house of any person, or any space within sixty feet thereof, without like consent. And when the line of the said way is located, if the owners of said lands or their agents, and the officers and agents of said company, cannot agree upon the value of such lands as the said company may deem necessary to use and occupy for their railway, depots, warehouses and stations, the said company may have and hold the said lands for their use in the manner following, to wit: The said company shall make out a particular description of said lands in writing, and file it in the

And to locate railway.

Restriction.

Disagreement between company and land owner.

How company shall proceed to have lands condemned.

office of the clerk of the circuit court of the county in which the lands are located, stating therein the sum they propose to pay therefor, and also file therewith a bond with securities to the satisfaction of the judge of the said court, conditioned to pay all that may be recovered against them as hereinafter provided; and thereupon they may enter upon and take possession of said lands, and proceed at once to appropriate and use the same for the purposes designated in the said description; but in no case shall the amount of land for the track of said road exceed sixty feet in width, except in case of cuts or fills, where the width may be one hundred and twenty feet; and the party or his agent owning the said land may file with the said clerk of said court his or her claim therefor, in which shall be stated the sum he or she may demand for said land; and the said court shall thereupon appoint five disinterested persons for the purpose of ascertaining a just compensation for the said land, any three of whom may act; and the sheriff, after the said appointment is made, shall summon the said viewers to meet on the said land at such time as he may appoint, giving at least ten days' notice to the parties interested. And the sheriff shall administer an oath to the viewers, which he is hereby empowered to do, that they, and each of them, will fairly, impartially and honorably assess, fix and determine the amount said railway company shall pay for the use of said land; and return their report in writing under their hands and seals, setting forth the amount, if any, to be paid by the said railway company; which report shall be certified by the sheriff; and on the first day of the next term of the court, the judge of the said court shall direct judgment to be entered upon said report, if no exceptions be taken and filed thereto by either party; but if exceptions be filed, the court shall decide according to the evidence before it; and after judgment is entered upon said report, the company shall hold said land by a good indefeasible title, subject only to the payment of the said judgment. The judge shall have power to determine and order which party shall pay the cost of such proceeding.

Restriction as to width of route.

Land owner to file claim in circuit court.

Court to appoint viewers.

Sheriff to summon and swear them.

Their report.

Judgment of court.

Assessment of costs.

Transfer of stock

8. Any stockholder of said company may assign and transfer his or her stock on the books of the company, or by attorney duly authorized so to do, and after such assignment and transfer, the assignee of said stock shall thereby become liable to said company for all unpaid assessments on said stock, and the previous stockholder shall be released from further liability therefor.

Reservation by Legislature. Proviso.

9. The legislature reserves the right to add to, alter or repeal the powers and privileges herein granted; but such addition, alteration or repeal shall not affect or impair the right of the creditors of the corporation to have the property and assets thereof applied in discharge of their respective claims, or of the stock-holders to have the surplus which may remain after having provided for the debts and liabilities of the corporation distributed among themselves according to their respective interests.

Conditions imposed on company.

10. This act shall be in force from its passage; but shall terminate and be void if the said company be not organized within two years, and in good faith commence operations on its railway within four, and finish at least twenty-five miles thereof within ten years from the date of its passage.

CHAP. 118.—An ACT to provide for the Assessment of Taxes.

Passed December 3, 1863.

Be it enacted by the Legislature of West Virginia:

1. The voters of every county shall elect, at the time and in the manner prescribed by law, one or more assessors, that is to say: The counties of Barbour, Greenbrier, Hampshire, Hardy, Harrison, Kanawha, Lewis, Marion, Marshall, Mason, Monongalia, Monroe, Ohio, Preston, Randolph and Wayne, shall each elect two, and the other counties shall each elect one. Those elected before the fourth Thursday of October, in the year eighteen hundred and sixty-four, shall hold their offices for the unexpired term ending on the first day of January, eighteen hundred and sixty-five, and shall enter on the discharge of their official duties as soon as they shall have taken the proper oaths of office and given bond as required by law. Those elected on the fourth Thursday of October, in the year eighteen hundred and sixty-four, or after that day, shall hold their offices for two years, beginning on the first day of January next succeeding their election. Each assessor shall reside in the district for which he was elected, and his removal therefrom shall vacate his office.

Election and apportionment of assessors.

Their terms,

Oath and bond,

And place of residence.

2. In those counties where there may be more than one assessor, each shall be for a certain district, the bounds whereof shall be laid off and described by an order of the board of supervisors of the county, and may be changed at any time by said board, provided that in the laying off or changing of such districts no township shall be divided.

Division of counties into assessment districts.

3. The jurisdiction, powers and duties of an assessor shall not extend beyond the bounds of his district, except to grant license to exercise a privilege which is not local and may be exercised in or out of his district as may be prescribed by law.

Assessor's jurisdiction.

4. Every person elected assessor, shall qualify and give bond within the time prescribed by the seventh section of the act relating to official bonds, passed June twenty-ninth, eighteen hundred and sixty-three. The bond shall be in the penalty of three thousand dollars, to be approved by the recorder of the county and filed in his office. It shall be recorded in the said office and a copy thereof be transmitted to the auditor, according to the seventeenth and eighteenth sections of the said act.

Time allowed for assessors to qualify.

Penalty of bond.

Disposition of bond.

5. If an assessor fail to qualify and give bond as aforesaid, the board of supervisors of the county may declare the office vacant, and the vacancy shall be filled as prescribed by law.

Failure to qualify and give bond.

6. The recorder of every county shall, annually, in the month of January, make out a list of all deeds for the partition and conveyance of land (except deeds of trust and mortgages to secure the payment of debt) which may have been lodged in his office to be recorded, (including those not fully proved,) within the year ending on the thirty-first day of December preceding, which list shall state the date of the deed, when admitted to record, names of grantors and grantees, the quantity of the land conveyed, and a description of the same.

Recorders to make, annually, lists of deeds.

Circuit clerks to make lists of judgments, and decrees; and lands devised.

7. The clerk of every circuit court shall make out a list of all judgments and decrees for the partition or recovery of lands which may have been rendered, and of all lands absolutely devised by will which may have been recorded in such court within the same year, and the recorder of the county shall also make out a list of all lands so devised by will which may have been recorded in his office within the time aforesaid; which lists shall state in each case the date of the decree, the land which is the subject of the partition, and between whom and in what proportions it is divided, and the date of the will containing the devise, when admitted to record, the names of the devisor and devisee, and a description of the land devised.

Recorders to make lists of lands devised.

Delivery of lists to assessors.

8. Every list mentioned in either of the two preceding sections shall be delivered by the officer making it to the assessor for his county; or if there be more assessors than one, the clerk or recorder shall deliver such list to one of them, and to the other a copy of so much thereof, at least, as relates to the lands within his district. If any clerk or recorder shall fail for one month after the expiration of the said year to perform any of the duties required of him by this or either of the two next preceding sections, he shall for such failure forfeit fifty dollars.

Failure to deliver by clerk or recorder.

Penalty.

Abstracts of land grants to be forwarded by secretary of the state to recorders.

9. The secretary of the state shall, annually, on the first day of January, make and forward to the recorder of each county an abstract of all grants for land lying in such county, issued by the said secretary upon warrants from the land office of the commonwealth of Virginia, within the year next preceding the said first day of January. And such recorder shall, as soon as may be, after the receipt of said abstract, make out and deliver an attested copy of the same to each of the assessors of his county, and shall file the original in his office. The secretary of the state or any recorder failing to perform the duty required of him by this section, shall forfeit fifty dollars.

Recorders to deliver copies to assessors.

Failure by secretary or recorders.

Delivery to assessor by interested party of judgments, &c.

10. Any party interested may also procure, at his own cost, a statement of any such judgment, decree or devise, as is mentioned in the seventh section, and deliver the same to the proper assessor.

Delivery of books and papers to assessor by predecessor or commissioner of revenue. Penalty for failure.

11. The assessor shall apply for the official books and papers which his predecessor or the commissioner of the revenue had to the person in possession thereof, who shall deliver the same on such application; and if such person fail to do so, he shall forfeit one hundred dollars.

Procurement of substitutes in case of such failure.

12. The auditor, upon being informed that any such books and papers cannot be obtained, may authorize the assessor to procure substitutes therefor. Any recorder or clerk furnishing the same may be paid therefor such fees out of the county treasury as he might by law charge an individual for similar services.

Authority of assessor to appoint deputy in certain cases.

13. An assessor unable, from sickness or other cause, to perform the duties of his office, may, at his own expense, appoint a deputy to be approved of by the board of supervisors for his county. Such deputy, after taking the proper oaths, may discharge any of the duties of assessor, and his principal shall be liable for the faithful performance of the same.

14. It shall be the duty of the auditor to prepare and furnish to the assessors printed forms for the land and property books, and also for lists of taxable subjects required to be furnished by the assessors to persons chargeable with taxes; and he shall also, by letter or printed circular, give such instructions, not contrary to law, to said assessors in respect to their duties as to him shall seem judicious and necessary; and if any assessor shall refuse or fail to obey any such instructions, he shall forfeit a sum not less than ten nor more than thirty dollars; the expense whereof, and of transmitting all such printed forms, lists and circulars of information, shall be defrayed out of the state treasury on the governor's order.

Forms and instructions to be furnished assessor by auditor.

Penalty for failure to obey instructions.

15. The auditor shall communicate any instances of misconduct or of official neglect of any assessor, or any evidence of incompetence furnished by anything in the auditor's office, in writing, to the clerk of the board of supervisors for the county for which he was elected, who shall lay the same before the board at its first meeting after it is received; and the said board shall thereupon proceed to consider and act upon the same.

Misconduct or neglect by assessor to be communicated by auditor to board of supervisors.

16. Upon complaint being made of an assessor, by such writing or otherwise, or when the board of supervisors have cause to believe that there has been neglect of duty on the part of any assessor, it may order a notice to be served by the sheriff of the county, or any other person whom they may appoint for that purpose, requiring such assessor to appear before the board at the next meeting. And after such notice shall have been served on the assessor, at least ten days before the return day thereof, the board shall at its meeting to which such notice is returnable, or to which it may be continued, consider whether there is incompetence or has been misconduct or neglect of official duty on the part of such assessor; and if two-thirds of the members thereof shall be of opinion that such cause exists, shall make an order for his removal.

Proceedings of board thereupon.

Removal of assessor.

17. Such changes as may happen within the district of any assessor, shall be noted by him in his land book as follows:

Land book.

18. He shall enter in the said land book and assess the value of all lands in his district appearing by the abstract of the secretary of the state to have been granted and not previously entered, having reference to the assessed value of contiguous lands similarly situated. If he shall fail to enter any grant mentioned in the abstract on the first land book made out after the abstract shall have been received by him, he shall for such failure forfeit twenty dollars to the state, and a like sum to the grantee, which shall be recoverable in a separate proceeding.

Entry of granted lands.

Penalty for failure.

19. Real estate purchased in for the state at a sale for taxes shall not thereafter be entered in the said books, but the auditor shall keep a register thereof. Whenever any real estate, so purchased, appears by the auditor's certificate to have been redeemed, the same shall be replaced in the body of the book, in the name of the owner or his grantee. When real estate is sold for taxes to individuals, the commissioner shall note on his land book the number of acres sold, and to

Land sold to state for taxes not to be entered till redeemed.

Lands sold to individuals for taxes to be continued.

whom, but shall continue the land upon his said book in the name of the former owner until the purchaser obtain a deed therefor.

Transfer of lands partitioned, conveyed, devised or granted.

20. The lands appearing on the lists or statements mentioned in the sixth, seventh and ninth sections of this act shall be transferred accordingly on the land book, and charged to the person to whom the transfer is made.

Lands jointly held assessed to joint owners severally.

21. When a tract or lot of land becomes the property of different owners, in several parcels, the value at which the whole had been assessed shall be divided by the assessor amongst the several parcels, having regard to the value of each parcel compared with that of the whole tract or lot, and the tax upon the whole shall be apportioned accordingly amongst the owners of the several parcels. If any person interested shall be dissatisfied with such apportionment, he may apply to the assessor to make a re-assessment, and the assessor shall make the same accordingly to the best of his skill and judgment, after ten days' notice of the time thereof to the parties interested, or to such of them as may be in the county or revenue district. Any party may, after like notice, apply to the board of supervisors to review the assessor's decision, and it may order his assessment to be corrected. In all cases where the surface of land is held by one person, and the minerals under the surface are held by another, the assessor, or assessors, in counties in which any such mineral and surface titles exist, are hereby authorized and required to determine the relative value of each, and to assess the respective owners of any such mineral and surface rights, with the value of their respective interests; provided, that the amounts assessed to both shall be the same as that with which the land would be assessed were the minerals and surface owned by the same person. Any person feeling himself aggrieved by the assessment of any such lands, or of the minerals under the surface thereof, under this act, shall have the benefit of the remedy hereinbefore provided for in the division of surface lands.

Redress of parties aggrieved by such apportionment.

Review and correction of re-assessment.

Assessment of lands having surface and mineral titles.

Proviso.

Redress of parties aggrieved.

Correction of errors in land book.

22. Every assessor in making out his land book, shall correct any mistake made in any entry in the original land book hereinafter provided for; but land which has been correctly charged to one person shall not afterwards be transferred to another without evidence of record, furnished as aforesaid, that such transfer is proper, except as follows:

Proviso respecting transfers.

23. When the owner dies intestate the assessor may ascertain who are the heirs of the intestate, and charge the lands to such heirs. Where the owner has devised the land absolutely, the assessor may charge the land to the devisees. If under the will the land is to be sold, the land shall continue charged to the decedent's estate until a transfer thereof is made.

Assessment of land in wrong county, district or township.

24. If any land lying in one county, district or township, be erroneously assessed in another, the assessor on whose book it is erroneously assessed shall certify the owner's name and the quantity, description and value of the land to the proper assessor, who shall enter the same on his book and charge the tax thereon; and the assessor

in whose book it was erroneously entered shall strike the same therefrom, upon being informed of the entry thereof by the proper assessor.

And of land partly in two counties, Or townships. Proviso.

25. Land lying partly in one county and partly in another, shall be entered by the assessor of the county in which the greater part lies; and where land lies partly in one township and partly in another, the assessor shall enter it in the township where the greater part lies; but the entry and payment of taxes in the county or township where any part thereof is situated, shall, for such time, be a discharge of so much of the taxes as may be so charged and paid. Where new buildings are erected, of the value of one hundred dollars or more, upon that part of the land lying in the county in which it is not assessed, the assessor in whose book it is entered shall assess and add the value of such buildings, as in other cases.

Proceedings in case of the conveyance of land (where tract lies in two counties,) lying in the one where not assessed,

26. Where land which lies partly in one county and partly in another, is assessed in the county in which the greater part lies, if the owner thereof shall convey that portion (or any part thereof) lying in the county wherein the same is not assessed, the assessor of the latter county shall enter upon his land book what is so conveyed, and certify the quantity contained in the part conveyed and its valuation, the quantity contained in the entire tract from which the part conveyed is to be taken, a description of the local situation of the entire tract, and the name of the owner thereof, to the assessor of the county wherein the whole was before assessed; who shall strike the part so conveyed from his land book, by deducting the quantity thereof and its proportionate value from that of the entire tract.

Or of land (where the tract lies in two assessment districts,) lying in the one where not assessed,

27. Where land lies partly in one assessment district and partly in another, and is assessed in the district where the greater part lies, if the owner thereof shall convey the lesser portion (or any part thereof,) the assessor for the district wherein such lesser portion lies shall enter what is so conveyed on his land book in the list for the township where it lies, and shall certify the quantity contained in the part conveyed and its valuation, the quantity contained in the entire tract from which the part conveyed is to be taken, a description of the local situation of the entire tract, and the name of the owner thereof, to the assessor of the district wherein the whole was before assessed; who shall strike the part so conveyed from his land book, by deducting the quantity thereof and its proportionate value from that of the entire tract. And when land lies partly in one township and partly in another, but in the same assessment district, and is assessed in the township where the greater part lies, and the owner thereof conveys the lesser portion (or any part thereof,) the assessor for the district shall enter the part so conveyed on his land book, in the list for the township wherein it lies, and shall strike the part so conveyed from the list of the township wherein the whole was before assessed, by deducting the quantity thereof and its proportionate value from that of the entire tract.

Or of land lying partly in two townships, in the same assessment district.

28. When the assessor shall ascertain that there is any land in his district to which any person has title by patent or otherwise, which

Entry and assessment of lands omitted.

has not before been entered on his land book, or after being entered has for any cause been omitted for one or more years, he shall make entry thereof and of the name of the owner; and if there be no assessment of the same, shall proceed to make such assessment to the best of his judgment, by reference to the assessed value of contiguous lands similarly situated; and shall charge on the land which he so enters, where the quantity contained in the tract exceeds one thousand acres, taxes at the rate imposed by law for each year in which the land was not before entered in such book, from the year eighteen hundred and thirty-two, inclusive, if the patent issued before that time, and if it did not, then from the date of the patent or other title, together with lawful interest on each year's tax. Where the non-entry or omission occurs after the twentieth day of June, eighteen hundred and sixty-three, the back taxes shall be charged whether the tract contains one thousand acres or a greater or less quantity. Any assessor failing to to make such entry and assessment shall forfeit twenty dollars.

Proviso.

29. The preceding section shall not, however, be construed to subject a *bona fide* purchaser of such land to the arrears of such tax, except from the date of his title thereto.

Duties of assessor before making out land book and lists of taxable personal property.

30. Each assessor, before making out his land book, (and when he takes the list of taxable personal property,) shall carry with him the book of the preceding year, and the entry of lands charged to any person resident or having an agent within his district shall be shown to such person or his agent, who shall be required to state on oath whether the same be correctly entered; whether any part thereof ought to be transferred to any other person, and if so, to whom, and the nature of the evidence to authorize such transfer; also to state whether any other land within the district ought to be charged to such resident or non-resident, and to describe the same, as well as to give a description of any of the lands charged to such resident or non-resident which may not be correctly entered. And the assessor shall make such use of the information so obtained as he can properly make consistently, with the other provisions of this act. Any such resident or agent failing to comply with such requisition shall forfeit fifty dollars. Any assessor failing to comply with this section, shall forfeit one hundred dollars.

Penalty for failure.

Assessment of buildings.

31. Each assessor, before making out his land book, shall assess the value of any old building omitted for one or more years, and of any building newly erected upon land on his book, together with interest on the taxes, at the rate of six per centum per annum for the omitted years. And where any such building not theretofore assessed, whether old or new, is found to be of the value of one hundred dollars and upwards, (valuing the same as nearly as may be at the same rate at which other buildings in the neighborhood were valued by the assessors under the previous general assessment,) the value thereof shall be added to the value at which the land was before charged.

32. No new building shall be assessed until so far finished as to be fit for use. But it shall then be assessed whether entirely finished

or not, at its value, and at its increased value from year to year, on account of further improvements, until completed.

33. Any building which may have been increased to one hundred dollars or upwards in value, by repairs or additions thereto, shall be assessed in the same manner as a new building.

34. When from natural decay or other cause, any building which may have been assessed, shall be either wholly destroyed or reduced in value below one hundred dollars, the assessor shall deduct from the assessment against the owner, the value at which such building may have been assessed. For any failure on the part of the assessor to comply with this or any of the three next preceding sections, he shall forfeit fifty dollars.

Penalty for failure.

35. The assessor in assessing the value of buildings used or intended to be used as manufacturing or other mills, shall ascertain the value of all machinery and fixtures attached thereto, and include the same in the amount of improvement charged to the owner thereof.

Buildings for manufacturing or other mills.

36. All real estate used for divine worship, or as parsonages or public burial grounds, or belonging to any county, city, incorporated town or township, or agricultural association, and used for public or charitable purposes, and not held or leased out for profit; or belonging to colleges, incorporated academies and free schools, and used for colleges or school purposes; or any public institution for the education of the deaf and dumb or the blind; or houses of refuge, or lunatic, or orphan asylums; or exclusively to the state; or used exclusively for the safe keeping of fire engines, and for the meeting of fire companies, whether owned by a fire company or by a city or town, shall be exempt from taxation; but nothing herein contained shall be construed to exempt from taxation any lot or building partially or wholly used for any private purpose, or as a residence, unless partially so used by the janitor or keeper thereof.

Real estate used for religious, public, or charitable purposes,

Or college or school purposes,

Or humane asylums,

Or used by fire companies,

Exempted from taxation.

Proviso.

37. The assessor shall place and retain on his land book the assessed value of all improved lots in any city or town, and the value of any building thereon, as well as of all unimproved lots in any such city or town; and the tax on the same shall be estimated according to such assessed value at the same rate which shall be paid on lands in the country.

Assessment of town lots.

38. The assessor shall make out his land book in such form as the auditor may prescribe, showing in tables the tracts of land, and in separate tables the town lots, with the names of the owners thereof arranged alphabetically for each township in his district.

Form and contents of land book.

39. In the tables of tracts of land, the assessor shall enter each tract separately, and shall set forth in as many separate columns as may be necessary, the name of the person who by himself or his tenant has the freehold in possession; his place of residence; the nature of his estate, whether in fee or for life; the number of acres in the tract; the name of the tract if it has a name; a description of it with reference to contiguous tracts or to the water courses, mountains or other

Tables of tracts of land.

places on or near which it lies; the distance and bearing from the court house; the value of the land per acre, including buildings; the value of the land and buildings; the sum included in the value on account of buildings; the amount of tax on the whole tract at the legal rate; and from whom, when and how the owner derived the land, where this is known; with a note and explanation of any alteration made, showing why and upon what authority it was made.

Tables of town lots.

40. In the tables of town lots he shall enter separately each lot, and shall set forth in as many separate columns as may be necessary, the name of the person, his residence and estate, as in the tables of tracts of land, charging lots leased for a term of years on ground rent, including all improvements thereon, not to the lessee but to the tenant for life, or fee simple owner under whom the lessee holds. The assessor shall set forth in other columns the number of each lot in the town, with the name of the town, if not previously placed in the caption or heading of the table; a description, where the person does not own the whole lot, of the part which he owns; the value of the buildings on the lot; the value of the lot including buildings; the amount of tax and the legal rate; and like notice of the source of the title, and explanation of alterations, as in the tables of tracts of land.

Taxable property to be listed.

41. All property within this state, and the money and credits of persons residing therein, whether such money and credits be in or out of this state, except such as is hereinafter expressly exempted or otherwise taxed, shall be entered on the list as taxable property, and be subject to equal and uniform taxation. The word "money" shall include not only gold, silver, and copper coins, but bullion and all notes that circulate as money. The word "credits" shall be construed to mean all contracts and securities for the payment of money or other thing, and all claims and demands owing or coming to any person, whether due or not, and whether payable in money or other thing; and where such claim or demand is payable in anything other than money, its present probable value in money shall be listed.

Money.

Credits.

Personal property exempted from taxation.

42. All personal property described in this section, and to the extent herein limited, shall be exempt from taxation, that is to say: All public and family libraries; all books, apparatus and furniture belonging to colleges, incorporated academies and free schools, and used for college and school purposes; or to the public institutions for the education of the deaf, and dumb and the blind; or houses of refuge, or to the lunatic asylum; and all personal property belonging to orphan asylums, overseers of the poor in their official capacity, and exclusively to the state, or to any county or township therein; all fire engines or other implements for the extinguishment of fires; all agricultural productions grown directly from the soil, and the natural increase in number and the products of live stock during the year previous to the first day of February in any year, when such products remain unsold in the possession of the producer on the said first day of February; and all manufactured articles and products of mechanical skill or labor produced in this state during the year previous to

the said first day of February, and remaining unsold in the hands of the producer on that day.

43. All other property, money, bonds, securities and liquidated claims of all persons, not otherwise exempt, shall be listed for taxation.

Other property to be listed.

44. Each person of full age and sound mind, not a married woman, shall list the personal property, money, contracts and credits in his possession or under his control or care, subject to taxation, and the subjects or persons on account of which he is chargeable with taxes or county levies. The property of a minor shall be listed by his guardian; if he has no other guardian, by his father, if living; if not by his mother, if living; if neither be living, by the person having charge of the property; the property of a married woman by herself; of a deceased person, idiot or lunatic, by the personal representative or committee; of a person for whom property is held in trust and is in the actual possession of the trustee, by the trustee; of a corporation whose assets are in the hands of agents, receivers or factors, by such agent, receiver or factor; of every company, firm, body politic or corporate, by the principal accounting officer, partner or agent thereof; all money, bonds or other evidences of debt under the control of any receiver or commissioner, by such receiver or commissioner; and all money deposited to the credit of any suit, by the clerk of the court in which such suit was brought. Personal property not situated in the county, city, town or township in which the owner or the person required by this act to list the same for taxation resides, shall be listed by the agent of such owner or other person, in the county, city, town or township where such property is, unless such owner or other person shall cause it to be otherwise listed in such last mentioned county, city, town or township. All bonds, evidences of debt and claims, wherever the debtor may reside, and all money, shall be listed by the owner thereof, or by the person required by this act to list the same for taxation, or by the agent of such owner or other person having the control and custody of such bonds, evidences of debt, claims, contracts and money.

By whom personal property listed.

45. The number of white male inhabitants and free negroes residing in any district on the first day of February, in each year, shall be ascertained and classified as follows: Each assessor shall ascertain the number of white male inhabitants in his district who have attained the age of twenty-one years, and who are not exempt from taxation on account of bodily infirmity; the number of male free negroes above the age of twenty-one years not exempt from taxation on account of bodily infirmity; and herein shall be included all persons and property removed from one county, city, town or township to another, between the first day of February and the time the assessor's books are required by law to be delivered to the collecting officer by the assessor; but persons assessed, and who have paid their taxes in any county, city, town or township, shall be exonerated in any other for that year.

Assessment of capitations.

46. He shall ascertain all the personal property in his district on the said first day of February, in each year, not exempt from taxa-

Assessment of personal property.

tion, and the value thereof; and all money, contracts for money or other thing, and all credits, whether in or out of the state, belonging to each person residing in his district, and the value of such credits; and herein shall be included all money, credits, capital, or other thing loaned out of the state, whether the evidence of the existence of such money, credits, capital or other thing loaned, remain in the hands of the owner thereof, or in the hands of his agent or other person for him.

Bonds and claims.

47. He shall ascertain from each person residing in his district, the amount of all solvent bonds and securities other than those mentioned in the preceding section, and of all solvent, liquidated and certain demands and claims, however evidenced, owing and coming to such person, whether due or not on the first day of February, deducting from the aggregate amount thereof the amount of all such bonds, securities, claims and demands owing to others from such person as principal debtor, and not as guarantor, endorser or surety; but in neither case shall unsettled book accounts, which have accrued in a licensed business within the year next preceding, be included. The aggregate of principal and interest shall constitute the amount of a bond or claim due and payable. The present value, after deducting the legal interest, shall constitute the amount of a bond or claim not yet due and payable, and which bears no interest.

Unsettled book accounts excepted.

Amount of bond or claim.

Assessment of toll-bridges and ferries,

48. He shall ascertain the yearly value of all toll-bridges and ferries in his district, except such as are by law exempt from taxation. He shall be governed by the actual rent received, where such toll-bridges and ferries are rented or leased out; otherwise he shall make a just estimate of their value.

Property of joint stock companies,

49. He shall ascertain from the proper officer of all incorporated joint stock companies in his district, except railroad and manufacturing companies, the actual value of their capital and of their surplus or contingent fund, exclusive of their real estate, and enter the same on the book of personal property. The real estate of all joint stock companies, except railroad companies, shall be listed and assessed as in other cases, as well as the personal property of manufacturing companies not required by the fifty-eighth and fifty-ninth sections to be listed as manufacturers' stock. If a corporation have branches, the branches shall be assessed separately in the county or district where they are located. Where the capital is so assessed, and the taxes thereon paid by the corporation, it shall not again be assessed to the individual stockholders. To ascertain the proper amount to be assessed to any corporation, the assessor may swear any officer of such corporation, or require him to render a statement in writing under oath.

And personal property of manufacturing companies.

When branches of corporation assessed.

Double assessment of, prohibited.

Authority of assessor to administer oath.

Assessment of capital employed in business.

50. He shall ascertain from all persons residing in his district, the capital invested, used or employed by them in any trade or business, except agriculture, mercantile or manufacturing, not including therein the assessed value of their real estate, which shall be listed and assessed as in other cases; but in no case shall the personal property, credits and money used, acquired or held in such trade or business, be otherwise assessed or listed than as such capital.

51. He shall ascertain from each person in his district who acts under the order of any court as receiver or commissioner, the amount of all money and bonds, or other evidences of debt under his control, the right to which may be undecided, and the style of the suit to which such fund belongs; and from the clerk of such court the amount deposited by order of such court in any bank or savings institution to the credit of any suit in such court, and the style of such suit. And of funds involved in suit.

52. The president, secretary or principal accounting officer of every railroad company, whether deriving its corporate powers exclusively from this state or not, shall list for taxation at its true value in money, verified by the oath or affirmation of the officer so listing, all the property, money and credits of such company, of whatsoever kind, wholly held or used in this state, and also the proportional value of all locomotives and rolling-stock passing in and out of this state on railroads crossing the lines thereof, to be ascertained by the proportion which the number of miles run within this state by such locomotives and other rolling-stock, may bear to the whole number of miles run by such locomotives and other rolling-stock over the road belonging to such company or any connecting line; the proportional value of all such locomotives and other rolling stock so ascertained, to be assessed as the property of the company owning and using the same, whether it be run upon its own or any other railroad within this state. The property exempt from taxation by the charter of any such company shall not be assessed. The proportional value of all locomotives and other rolling-stock, and the value of all other personal and moveable property, money and credits shall be added to the stationary and fixed property and real estate, and shall be apportioned by such officer to each county through which the road passes *pro rata*, in proportion to the fixed property and real estate belonging to the company in such county; and all property so listed shall be subject to and pay the same taxes as other property listed in such county. Said officer shall, on or before the first day of April, in each year, make out and return such *pro rata* valuation of the real and personal property, and money and credits of such company in the several counties through which such railroad passes, verified as aforesaid, to one of the assessors of each of said counties, respectively. If said assessor is of opinion that false or incorrect valuations have been returned, he shall proceed to assess the value of all such property according to the best information he may be able to obtain, in the manner prescribed in section sixty-nine of this act. Who to list property of railroad companies. Exemption. Apportionment to counties thro' which road passes. Time of making return. False return.

53. Whenever, in any one year, the president, secretary or principal accounting officer of any railroad company shall fail to make the return required by the preceding section, in the manner and by the time therein required, it shall be the duty of the respective assessors of each of the several counties through which said railroad passes, to proceed to ascertain the valuation of the property of said company within his county, mentioned in the preceding section, and in the manner therein prescribed. Failure to make such return.

Penalty.

54. Every company failing to render the lists and valuations of its property, as provided in the fifty-second section, shall be fined one hundred dollars for every county through which the road may pass, to the assessor of which no return has been made. If any such company fail to pay the taxes assessed upon its property as aforesaid, the sheriff or other collecting officer shall proceed to sell any personal property of said company, at his discretion, in sufficient quantities to pay such taxes.

Failure of such company to pay taxes.

Return of receipts of insurance and express companies.

55. Every agent of any insurance company, incorporated by any other state or government, and every agent of any express company, whether incorporated by this state or not, shall return, under oath, to the assessor of the district in which the office or agency of such company may be kept, in the month of February, annually, the amount of the gross receipts of such agency for the year next preceding the first day of said month. If such agency shall not have been in operation one year on the said first day of February, then such return shall be for the time such agency shall have been in operation. The amount so returned by such agent shall be taken and held as representing a capital sixteen and two-third times greater than such receipts; which capital, so represented, shall be entered by the assessor on the tax list for the proper county and township, and be subject to the same rate of taxation for all purposes that other personal property is subject to at the place where located. All real and personal property belonging to such agency shall be listed and assessed as in other cases. Any agency failing to make the return required by this section shall forfeit five hundred dollars.

Assessment of their property.

Penalty for failure to make return.

Assessment of merchants' stocks.

56. Every person that shall own or hold in his possession, subject to his control, any personal property within this state which shall have been purchased with a view of being sold at an advanced price or profit, or which shall have been consigned to him for the purpose of being so sold, shall be held to be a merchant; and whenever he shall be required, according to the provisions of this act, to make out and deliver to the assessor a statement of his personal property, he shall make and deliver a separate statement embracing the value of such personal property as appertains to his business as a merchant, and in estimating the value thereof, he shall take the average value of all such articles of personal property, which the said merchant shall have had from time to time in his possession or under his control, during the year ending on the thirty-first day of January next preceding the time of making such statements, if he shall have been so long engaged in such business, and if not so long, then during the period that he shall have been so engaged; and the average value of such property shall be ascertained, as near as may be, by estimating the amount in value on hand in each month of the next preceding year, in which the person making such statement shall have been engaged in business, adding together such amounts and dividing the aggregate amount thereof by the number of months that the person making the statement may have been in business during the preceding year; provided that no consignee shall be required to list for taxation the value

Proviso as to commission merchants.

of any property consigned to him for the purpose of being stored or forwarded, if he shall have no interest in such property, nor in any profit derived from its sale. The word "person," as used in this and the succeeding sections, shall be held to mean and include "company" and "firm," whether incorporated or not. But as to any merchant who has a license to sell goods under existing laws, this section shall not take effect until the expiration of such license.

"Person" construed.

Proviso as to merchants now holding licenses.

57. Every person who shall purchase, receive or hold in his possession, personal property of any description, for the purpose of adding to the value thereof, by any process of manufacturing, refining, rectifying, or by the combination of different materials with a view of making a gain or profit by so doing, shall be held to be a manufacturer; and he shall, when he is required, according to the provisions of this act, to make out and deliver to the assessor a statement of his other personal property subject to taxation, make and deliver to the assessor a separate statement embracing the average value to be estimated as provided in the preceding section, of all articles purchased, received or otherwise held for the purpose of being used in whole or in part, in any process or operation of manufacturing, combining rectifying or refining, which from time to time, he shall have had on hand during the year ending on the thirty-first day of January next previous to the time of making such statement, if so long he shall have been engaged in such manufacturing business, and if not, then during the time he shall have been so engaged.

Assessment of stocks of manufacturer.

58. Every person owning a manufacturing establishment of any kind, and every manufacturer, shall list as a part of his manufacturer's stock, the value of all engines and machinery of every description, used or designed to be used in any process of refining or manufacturing, (except such fixtures as may be attached to the freehold and assessed and taxed as such), including all tools and implements of every kind used or designed to be used for the aforesaid purpose.

Manufacturers' implements to be listed as part of stock.

59. Every person intending to engage in the business of merchandizing or manufacturing, in any district in this State, after the first day of February in any year, shall, before commencing such business report under oath, to the assessor of such district, the probable amount of the average value of the personal property intended by him to be employed in such business until the last day of January thereafter.

Report to assessors by persons intending to employ capital in merchandizing or manufacturing.

60. It shall be the duty of the assessor to whom such report may be made, immediately to report to the collecting officer of his county, the name of the person or persons so intending to engage in the business of merchandizing or manufacturing, his place of business, the amount of the average value of the personal property intended by him to be employed in such business until the last day of January thereafter, and the amount of tax due upon the same, respectively, for the State, county and township purposes; which tax the collecting officer shall proceed at once to collect, and give to the person or persons aforesaid, a receipt therefor, upon the production of which receipt to the assessor, he shall deliver to such person or persons, a certificate to the fol-

Assessment of taxes on such party.

Collection of same.

Certificate of receipt thereof.

lowing effect: "I, A. B., assessor of —— district, in the county of ——, do hereby certify that ——of——, has (or have) been assessed with, and paid the lawful tax on his (or their) personal property, intended to be employed in the business of ——, for the year ending the thirty-first day of January, 18—;" which certificate signed by said assessor shall entitle the party holding to transact such business. But any person who shall, after the first day of February engage in the business of merchandizing or manufacturing, and obtain therefor the certificate required by this section, and who has previously, for the same year, been assessed with any value which he intends, in good faith, to employ in such business, shall not be assessed with such value, in the probable amount of his average stock therein.

To constitute a license when endorsed by assessor.

Proviso against double assessment in such cases.

Assessor's report of such assessments to the auditor.

61. Each assessor shall report to the auditor monthly after the first day of February in each year, lists of the assessments so made by him as aforesaid, stating the name of the person or firm so intending to engage in the business of merchandizing or manufacturing, the place of business, the amount of the average value of the personal property intended to be employed in such business, and the amount of state tax assessed thereupon until the last day of January thereafter, and the name of the collecting officer to whom the same was paid. The assessor shall, in like manner, return to the treasurer of his county similar lists, showing the amount of taxes due thereon for county and township purposes. Any assessor failing to discharge any of the duties required of him by the three preceding sections, shall forfeit one hundred dollars.

And to the county treasurer.

Penalty for commencing business as merchant or manufacturer without assessor's certificate

62. If any person shall, after the first day of February, in any year, commence the business of merchandizing or manufacturing within the state, without first having obtained the certificate from the assessor of the district in which he intends to prosecute such business, as is required by the sixtieth section of this act he shall be fined not less than one hundred dollars nor more than three hundred dollars.

Time assessor shall begin.

63. Each assessor shall begin, annually, on the first day of February, and proceed without delay, to ascertain all the persons or property on that day, in his district subject to taxes and county and township levies, and otherwise to discharge the duties prescribed by this act.

His duties set forth.

64. Each assessor shall call upon every person in his district required by this act to give in a list of property, money, credits or other subjects of taxation, and the value thereof, or of the persons with respect to which he is chargeable with county levies, for a list thereof; and may apply to any officer or agent of a company, except where otherwise directed in this act, or to any person interested therein; and shall administer an oath to any person to make true answers to such questions as he may ask him in relation to any matter about which the assessor is authorized to inquire. An assessor failing to make any call or administer the oath required by this section, unless the person refuse to take it shall forfeit fifty dollars.

Penalty.

65. The assessor shall also ascertain and assess the value of all property listed as aforesaid; and if in any case a person shall consider himself aggrieved by the valuation of the assessor, such person and the assessor, respectively, shall choose two discreet voters, to whom shall be referred the matter of controversy, and their decision, or that of an umpire chosen by them, shall be final. Each list, with the valuations of property annexed, shall be read over by the assessor to the person from whom it is obtained, or on whose information it is made out, and shall then be corrected in such respects as may be necessary.

Assessor's duties

Redress of party aggrieved.

66. The assessor shall endeavor, by asking proper questions and obtaining answers thereto, to have in such lists a correct and full statement of the persons and the personal property, and the value thereof, in his district subject to taxation or county and township levies, which were in the possession or care of each person in such district on the first day of February, and of all the other subjects before mentioned on account of which any person or company in his district was then chargeable. The answers to the assessor's questions shall always be on oath.

Assessor's duties

67. If any person shall desire it, the assessor shall furnish or cause to be furnished him proper forms of such lists and valuations, and such person shall within ten days thereafter, make out and deliver to the assessor, or deposit with the clerk of the board of supervisors, statements of all property, money, contracts and credits which such person is required by this act to list, and of all subjects and persons on account of which he is chargeable with taxes or county and township levies. He shall annex, in the form prescribed by the assessor, valuations of the property so listed; and shall take and subscribe an oath, to be appended to such statement, to the following effect, viz: "I do solemnly swear (or affirm) that to the best of my knowledge and belief, the annexed statements contain accurate, full and complete lists of all property, money and credits, whether the same are in or out of the state, which I am required to list, and of all subjects and persons on account of whom I am chargeable with taxes or county or township levies, and that in my opinion the valuations of the property listed are not below the fair cash value thereof: So help me God." Which oath may be administered by the assessor or any other officer authorized by law to administer an oath; and if any person be absent from his residence at the time the assessor calls, (and there be no person on the premises authorized to act for such person,) the assessor shall leave or cause to be left for such person at his residence, with some white member of his family over the age of sixteen years, or if there be no such white person on the premises, shall otherwise cause to be delivered to such person, proper forms to enable him to make out the statements aforesaid, with the form of the oath aforesaid appended thereto; and it shall be the duty of such person, within ten days thereafter, to make out and deliver to the assessor, or deposit with the clerk of the board of supervisors, such lists, with the valuations of property annexed, verified by affidavit, as are hereinbefore required; but any such person desiring the forms to be furnished to him, as aforesaid,

Blank forms furnished to parties desiring them.

Time for filling out and delivering or depositing same.

Oath taken by party listing property,

Administered by assessor.

Blank forms to be left at residence of party in his absence.

Time for filling out and delivering or depositing same.

Assessor to value property if required.

Or if dissatisfied with valuation returned.

Redress to party aggrieved.

may be released from the obligation of valuing the property listed as aforesaid, by exhibiting the same to the assessor, who shall thereupon assess the value thereof; and any such person who is absent when the assessor calls at his residence may decline to include a valuation of his property in the statements required to be delivered or deposited as aforesaid, and in such case the assessor shall ascertain the value of such property; and if the assessor is not satisfied with the valuation of the property made by any such person, he may adopt what he deems a fair and proper valuation thereof; and in case any such person shall consider himself aggrieved by such valuation, the controversy shall be decided in the manner prescribed in the sixty-fifth section of this act.

Construction as to household and kitchen furniture.

68. This act shall not be construed to require any person to furnish, or the assessor to take, a list of the articles of such person's household and kitchen furniture other than those specified by this act, but only the aggregate thereof.

Assessor's duties on failure of parties to return lists and valuations.

69. If any person shall fail to furnish a list of the subjects of taxation and county and township levies required by this act, and a valuation of the property listed, the assessor shall proceed to list the same and assess the value thereof on the best information he can obtain; and to that end may examine any person on oath; and whether such person fail to furnish such list or not, the assessor may call for any proper information in possession of any officer of this state, who shall furnish the same to him.

Penalty for parties furnished with forms failing to return lists,

Or refusing to exhibit property to assessor.

Parties so offending to be specially reported.

70. If any person, after being furnished with proper forms as aforesaid, shall fail within the time mentioned in this act to deliver or deposit the list in the manner prescribed by this act, he shall forfeit ten dollars. If any person shall refuse to exhibit to the assessor any property listed, or required by this act to be listed by him in order that a fair valuation thereof may be assessed, he shall pay a fine of not less than twenty nor more than one hundred dollars. Any person failing to comply with this section shall be noted at the end of the assessor's property book, or be otherwise specially reported by the assessor to the auditor.

How personal property book made out, and contents of same.

71. From the lists procured as aforesaid, the assessor for each district shall make accurate statements in the form to be prescribed by the auditor, which shall truly and distinctly set forth the number of white male inhabitants who have attained the age of twenty-one years, except those exempted from taxation on account of bodily infirmity; the number of free colored male inhabitants over the age of twenty-one years, except those exempted from taxation on account of bodily infirmity; the number of slaves and the value thereof; the number of horses, mules, asses and jennets, and the value thereof; the number of cattle, and the value thereof; the number of sheep, and the value thereof; the number of hogs, and the value thereof; the aggregate value of all household and kitchen furniture; the number of pleasure carriages, stage-coaches, Jersey wagons, carry-alls, gigs, buggies, wagons, and vehicles of like kind, and the value thereof, not including those taxed as part of the stock of a merchant or manufacturer; the number of watches, and the value thereof, not including those taxed as part of

the stock of a merchant or manufacturer; the number of piano-fortes, melodeons and harps, and the value thereof, not including those taxed as part of the stock of a merchant or manufacturer; all gold and silver plate, plated ware, and jewelry, and the value thereof, not including any such articles taxed as a part of the stock of a merchant or manufacturer; the actual value of the capital and of the surplus or contingent fund, excluding the value of their real estate, of all incorporated joint stock companies, except railroad companies; all money, solvent bonds, contracts for money or other thing, securities and liquidated claims, whether due or not, and whether in or out of this state, belonging to any person or firm, after deducting from the aggregate amount thereof the amount of all such bonds, securities, claims and demands owing to others as principal debtor; the yearly rent or value of all toll-bridges or ferries; the amount of capital invested, used or employed in any trade or business, except agriculture, mercantile, manufacturing, or any incorporated joint stock company, excluding the assessed value of real estate; the amount of money, bonds, contracts or other evidence of debt under the control of any court, receiver or commissioner; the *pro rata* valuation of the real and personal property, money and credits, within the county, of railroad companies; the amount of capital represented by the gross receipts of the agents of insurance and express companies; the amount of the average value of the personal property required to be listed by a merchant; the amount of the average value of the material and manufactured articles required to be listed by a manufacturer; all other articles of personal property not exempt from taxation, and the value thereof.

Entry of omitted taxes.

72. If an assessor shall discover, in making up his land or property books, that any taxes or levies have been omitted for any former year, he shall enter therein such omitted taxes or levies, with lawful interest thereon.

Book of taxes and tax payers.

73. Each assessor shall make a book containing the names of the owners of property, and other persons taxed or subjected to levies, alphabetically arranged by townships, and giving information in such form as the auditor may prescribe, as to all persons and subjects on which taxes may be assessed. Opposite the name of each person shall be extended the whole amount of public tax due from him.

Totals therein.

74. He shall also add up the columns of figures on each page, and at the end of each township list, so as to show at the bottom of each the total aggregate of each column, and number of articles and persons subject to taxation, with the amount of public tax due on every thing contained in such page; and at the end of each book he shall enter the sums from the bottom of the respective pages, by reference thereto, so as to present at one view the various species and total number of the subjects of taxation within his district, and each township thereof, and the total amount of the revenue arising therefrom.

Property of decedents.

75. The land of any decedent shall be charged to his estate until it can be properly charged to the heir, devisee or grantee. And the personal property of the decedent shall be likewise charged to his estate until the same be disposed of. While either continues charged

to the estate the personal property shall be liable for the tax on all so charged, and subject to distress or other lawful process for the recovery of the same. Any assets in the hands of the personal representative of the decedent shall be likewise liable therefor.

Assessor's property to be reported by himself.

76. The assessor shall make a particular report on oath to the board of supervisors of his county of all his own property subject to taxes or levies, showing the whole amount chargeable to him therefor. On his book, his property shall be entered and taxes and levies charged to him in like manner as to any other person. For failing to perform any duty required by this section, he shall forfeit one hundred dollars.

Penalty for failure.

Books for former years, how made.

77. If in any case in which, in consequence of there being no assessor for a former year, or from any other cause, no book was made out of the land tax or the tax on personal property, or those subject to levy in any district for that year, the assessor for such district shall proceed to make out books for such year according to the rate of tax or levy which then existed, as well as books for the current year. The like proceedings shall be had with and under the books of such former year as with those of the current year, and the sums therein charged shall be collected and accounted for in like manner.

Proceedings under.

Original personal property book.

78. The original of the personal property book shall be retained by the assessor so long as he continues in office, and then be delivered to his successor. If he fail herein, or if he fail to make the copies required by the next succeeding section, he shall forfeit fifty dollars.

Copies of same.

79. The assessor shall make three fair copies of the personal property book; and when the same shall be completed, he shall, with such assistance as may be necessary, compare the same with the lists taken from individuals, and examine the same in such other way as his own information will enable him to do; and shall correct such errors as may be found to exist upon such comparison and examination in such manner that the entries of the lists, the additions, proofs, and recapitulations in each of such books shall be both correct and alike in words and figures.

80. As soon as such comparison and examination shall have been completed, the assessor shall make and subscribe the following oath, at the foot of each of the three copies of the personal property book: "I, A. B., assessor for the county of ——, do swear that in making out the foregoing book, I have to the best of my knowledge and ability, pursued the laws prescribing the duties of an assessor; and that I have faithfully and carefully compared and examined this book, as required by the seventy-ninth section of the act of the legislature for the assessment of taxes, and that I believe the entries of the lists, the additions, proofs and recapitulations are correct, and that the same is alike in words and figures to the two other copies of the personal property book made by me for my district in this year." And the justice (or other officer) before whom the oath is taken, shall annex thereto the following certificate: "Sworn to before me, C. D., a —— for the county of ——, on the —— day of ——," which certificate shall be subscribed by the officer administering the oath.

Affidavit thereto

Certificate of officer before whom made.

First assessors to make land books.

What such books are to contain.

Form thereof.

Assessor's compensation for making same.

81. It shall be the duty of each assessor who may first exercise the dutes of his office within any district under the provisions of this act, to make out a land book embracing all the lands and town lots within such district, compiled from the land book delivered to him by his predecessor, and from such other sources of information as may be within his reach; in which book each tract of land and town lot in each township within such district shall be charged alphabetically in the name of the owner thereof, in the township in which it lies (or the greater part thereof.) In the form of said land book the assessor shall be governed by the requirements of the thirty-eighth, thirty-ninth and fortieth sections of this act, and shall be paid such reasonable compensation for making out the same as the board of supervisors of the county may deem just, to be levied for by said board and paid out of the county levy of the year in which said book may be made.

Such book to be the original land book.

Penalty for failure to make same.

82. The land book required to be made by the preceding section, shall, when completed, constitute the original land book for the district and shall be retained by the assessor so long as he continues in office and then be delivered by him to his successor. If any assessor shall fail to make such original land book as is required by the next preceding section, he shall forfeit one hundred dollars.

Copies of such land book.

Penalty for failure to make same.

83. The assessor shall also make three fair copies of his land book, and shall make a like disposition of the original thereof as of the personal property book required by section seventy-eight of this act; and if he fail so to do, or to make the copies required by this section, he shall be subject to a like penalty as provided for in section seventy-eight of this act.

Comparison of same.

84. When three copies of the land book shall have been made by the assessor, as required by the preceding section, the assessor shall, with such assistance as may be necessary, compare each copy thereof with the original land book, with the record of the recorder's office, when necessary, and with such transcripts, abstracts or statements from the records of other offices as may be in his possession, relating thereto. He shall correct such errors as may be found to exist upon such comparison, so that the entries, additions and recapitulations in each of said books, shall be both correct and alike in words and figures.

Affidavit thereto.

85. As soon as such comparisons and corrections shall have been completed, the assessor shall make and subscribe the following oath at the foot of each of the three copies of his land book: "I, A. B., assessor for the county of———, do swear that in making out the foregoing book, I have to the best of my knowledge and ability pursued the laws prescribing the duties of an assessor, and that I have faithfully discharged the duties required of me in assessing improvements upon lands, and that I have faithfully and carefully compared and corrected said books as required by law; and that I believe the entries, additions and recapitulations are correct and like the other two copies of the land book made by me within my district in this present year." And the justice or other officer before whom the oath is taken,

Certificate of office, before whom made.

shall annex thereto the following certificate: "Sworn to before me, C. D., a —— for the county of —— on the —— day of ——," which certificate shall be subscribed by the justice or other officer making it.

How copies of land book and personal property book disposed of

86. After the land book and the book of personal property are completed, compared and corrected, and certified as required by sections seventy-nine, eighty, eighty-four and eighty five of this act, the assessor shall, on or before the twentieth day of June next ensuing, deliver one copy of the land book and one copy of the book of personal property to the clerk of the board of supervisors for the county, to be by such clerk carefully preserved amongst the records of his office, free for the inspection of any person; and a copy of either, or any portion thereof, may be made by or had at the charge of any person desiring the same. And such copies of the land book and the book of personal property preserved by the clerk, shall also serve for laying the county levy.

87. The assessor shall, on or before the first day of July next ensuing, deliver one copy of the land book and one copy of the book of personal property lawfully certified as required by this act, to the sheriff or other officer authorized to collect the taxes assessed therein, and they shall be his guide in collecting the same.

Same as evidence.

88. The assessor shall, on or before the first day of August next ensuing, transmit to the auditor one copy of the land book, and one copy of the book of personal property, certified as required by this act, accompanied with the certificate of the assessor, stating that he has delivered a duplicate thereof to the sheriff or other collecting officer for his county, and the time of the delivery. The copies so transmitted shall be a guide for the auditor to settle by, with such sheriff or other officer. They shall be admitted as evidence in any proceeding for judgment against such sheriff or other officer on account of the taxes with which he is chargeable.

Receipt for such books.

89. The assessor may require from the clerk of the board of supervisors, sheriff (or other officer,) and auditor a receipt or acknowledgment in writing of the delivery of the said books to them respectively.

Penalty for false entry by assessor.

90. If any assessor shall knowingly make a false or erroneous entry on any of his books, he shall for every such offense forfeit two hundred dollars.

Penalty for failure to deliver copies of land and personal property books.

91. If the duty prescribed by sections eighty-six, eighty-seven and eighty-eight shall not be performed as therein required, the assessor failing to perform any of these duties shall, for such failure, pay a fine of not less than one hundred nor more than five hundred dollars.

Assessor's fees.

92. Each assessor shall be entitled to the following fees: For making an entry and assessment under the twenty-eighth section, of any parcel of land, one dollar for every such parcel, to be paid by the owner; for making an assessment, when requested by any owner of any part of the land, under the twenty-first section, one dollar, for

which the parties amongst whom the land is divided shall be jointly and severally liable, except where the assessor's proceedings are confirmed by the board of supervisors, in which case the party complaining shall pay the assessor's fee, in addition to any costs which may be incurred in consequence of the application to the board of supervisors; for making an entry transferring lands before charged to one person unto another, seventy-five cents, which shall be charged to the person to whom the transfer is made, and be a compensation for all the tracts in the assessor's district conveyed by the same deed; for an entry of any grant according to the eighteenth section, a fee of twenty-five cents from the grantee, and fifty cents from him for assessing the land granted; for every report made to a collecting officer of the estimated average value of the personal property of a merchant or manufacturer commencing business, a fee of fifty cents, and a like fee for every certificate delivered to such merchant or manufacturer upon the production of the receipt of such officer, which shall be paid by the person whose property is so reported or to whom such certificate is delivered.

Collection of same.

93. The assessors may make out tickets for their fees and place them in the hands of a sheriff or other officer to be collected and accounted for in the same manner that clerk's fees are collected and accounted for. The said assessor's shall be subject to the same penalties as clerks of courts for issuing tickets wrongfully.

Penalty for issuing false fee bill.

Assessors' commission.

94. Every assessor shall be entitled to receive in consideration of his services, to be paid out of the county treasury as other claims against the county are paid, a commission of two and one-half per centum on the amount of taxes lawfully assessed by him on persons and property within the preceding twelve months. But where taxes on persons and property assessed in any district in a county exceed twenty thousand dollars, the commission allowed on the excess shall be only one and-a-half per centum; and where the said taxes assessed in any district in a city or town exceed sixteen thousand dollars, the commission allowed on the excess shall be one per centum.

Or yearly allowance.

95. The allowance of the assessor of any county shall, at his election, be his commissions allowed in the next preceding section, or a specific allowance of two hundred dollars. The auditor shall pay out of the contingent fund of his office to the several assessors all postage advanced by them in the transmission of their books, or any correspondence touching the duties of their office, the accounts for which shall be verified by their affidavits.

Postage refunded.

Assessor's settlement with board of supervisors.

96. The said compensation hereby allowed to an assessor, shall be denied, unless he produces to the board of supervisors the receipts or acknowledgments in writing, of the officers mentioned in the eighty-ninth section of this act, for the delivery of copies of the land book and personal property book, within the time prescribed by law, or can show to the satisfaction of the board of supervisors, a strong and sufficient reason for his delay. In every such case the board of supervisors may settle with such assessor for his services upon equitable principles.

Allowance for making books for former year.

97. Where, however, any assessor makes out books for a former year, such compensation shall be allowed him by the board of supervisors, in addition to what he is entitled to for his services during the current year, as he would have received in the former year, had he then been elected and performed the duties of assessor.

98. When one assessor begins in any year, and dies or is removed before the services to be rendered by the assessor in that year are fully performed, in consequence whereof another is elected who completes the same, the sum to be paid for the whole services of the assessors in that year, shall be apportioned by the board of supervisors, between the assessor last elected and the former, according to the services by them respectively performed. If, however, in consequence of any failure to deliver up books or papers which the former had, the latter has to proceed to take the list of taxable property, and do all that he would have had to do in case there had been no previous assessor that year, then he shall receive all the compensation for the said year.

Alteration in books after delivery prohibited.

99. After the assessor shall have verified and delivered the copies of the land book or the book of personal property, no alteration shall be made in either, by him, affecting the taxes of that year.

Redress of parties for erroneous entries therein,

100. But any person aggrieved by any entry in either book, or with any assessment of a license tax, may, within one year after the date of the verification, where the entry is in either book, and within one year from the assessment of said license tax, apply, by petition, for relief to the board of supervisors of the county wherein the assessor gave bond and qualified.

Granted by board of supervisors.

101. If the board of supervisors be satisfied that the applicant is erroneously charged on such book, or so assessed with any taxes on licenses, it shall certify the facts upon which it grants relief, and shall order that he be exonerated from payment of so much as is erroneously charged, if not already paid, and if paid, that it be refunded to him.

Release or repayment of taxes by collector,

102. Such order delivered to the sheriff or other collecting officer shall restrain him from collecting so much as is thus erroneously charged, or if the same has already been collected, shall compel him to refund the money, if such officer has not already paid it into the treasury; and in either case it shall be a sufficient voucher to entitle the officer to a credit for so much in his settlement with the auditor.

Or warrant on state treasury.

Time of application for redress.

103. If what was erroneously charged has been paid into the state treasury, the order of the board of supervisors, attested by its clerk, shall entitle the claimant to a warrant on the state treasury for the amount thereof; provided, that application for the same be made to the auditor within one year after the date of the assessor's verification or such assessment of the license tax.

Action of board of supervisors reviewed by auditor.

104. If from the statement of facts or other evidence, the auditor shall be of opinion that the order of the board of supervisors granting the redress is erroneous, he may advise a supersedeas or appeal to the

circuit court of the county having jurisdiction over the county in which the order was made. Such appeal or supersedeas shall be granted as a matter of right, and shall be prosecuted by the prosecuting attorney for the county. The circuit court upon the facts stated, and upon such other evidence as either party may offer, shall affirm or reverse the order of exoneration, and shall make such order thereupon for the collection of the taxes or otherwise as such court may consider proper. The appeal or supersedeas shall be tried in a summary way, without pleadings in writing. No costs shall be awarded by the court or paid by the state about such appeal or supersedeas, unless the court, in its discretion, shall give judgment for costs against the assessor who made the erroneous assessment.

Appeal to circuit court.

Proceedings thereupon.

105. Any person desiring to have any tax on real property, with which he or any person from whom he may have derived title, may have been or may hereafter be erroneously or inequitably charged, and which may have been or shall be returned delinquent for the nonpayment thereof, released or refunded, may, within five years after such property has been so charged, file with the auditor a declaration in writing, verified by affidavit, setting forth the facts upon which he claims relief; and the said auditor shall grant such relief as upon the facts properly proven before him shall appear to be just and equitable. The said auditor shall, in his annual report, make an accurate statement of all cases upon which he may have acted under this act, and the grounds upon which he may have granted or refused relief.

Remedy in case of taxes erroneously charged on real estate and returned delinquent.

Statement by auditor in annual report.

106. It shall be the duty of every assessor to furnish the prosecuting attorney for the county a list of every violation of the revenue laws committed by any person other than himself, showing the nature and character of each violation. And it shall be the duty of each attorney to deliver such list to the foreman of the grand jury, who shall treat it as having been specially delivered in charge to the grand jury. The said foreman, after the grand jury is discharged, shall return such list to the clerk of the court, to be preserved and filed by him in his office. It shall also be the duty of the circuit court specially to charge the grand juries to inquire into all violations of the revenue laws by the assessor.

Violation of revenue laws.

107. Any action or motion for the recovery of any fine or forfeiture prescribed by this act against any assessor, clerk or recorder, may be instituted or made by the auditor in the circuit court of the county in which the seat of government is located, according to the second section of the forty-third chapter of the code of Virginia, second edition, or any law in force in relation thereto.

Recovery of penalties under this act.

108. All property not expressly exempted from taxation shall be ascertained in the manner prescribed in this act, and shall be subject to taxation.

General provision as to assessing property.

109. Chapter thirty-five of the code of Virginia, second edition, is hereby repealed.

Law repealed.

CHAP. 119.—An ACT concerning Superintendents and Commissioners of Schools, and the distribution of the Capitation Tax for 1861, 1862 and 1863.

Passed December 3, 1863.

Be it enacted by the Legislature of West Virginia:

Vacancies—how filled.

1. Where a vacancy exists in the office of superintendent of schools for any county, or in the office of school commissioner in any district of a county, the judge of the circuit court of such county shall fill such vacancy by appointment.

Superintendents to qualify and give bond.

2. The superintendents of schools of the several counties, whether elected under the provisions of the fifth section of chapter eighty-one of the code of Virginia, second edition, or appointed under the provisions of this act, shall each, before entering upon the duties of his office obtain a certificate from a justice of his county that he has taken the oaths of office prescribed by law, and if he has not heretofore done so, shall give bond with sufficient security, in the penal sum of not less than two thousand nor more than five thousand dollars, conditioned for the faithful discharge of the duties of his office, and for accounting for and paying over, as required by law, all money which may come into his hands by virtue of his office, to be approved by the recorder of his county, and with the aforesaid certificate, filed in such recorder's office; a copy of which bond and certificate the recorder shall immediately transmit to the auditor.

Amount and condition of bond.

How bond and certificate of oath disposed of.

When auditor to pay capitation tax to counties.

3. Upon the receipt of a copy of the bond and certificate mentioned in the preceding section, the auditor shall pay to such superintendent the amount due such county on taxes from capitations for the years eighteen hundred and sixty-one, eighteen hundred and sixty-two, and also such taxes from capitations for the year eighteen hundred and sixty-three, as may have been paid into the treasury from the several counties, cities or incorporated towns, according to the provisions of an act passed by the general assembly of Virginia, on the thirtieth day of January; eighteen hundred and sixty-three, entitled "an act appropriating the capitation tax for the year eighteen hundred and sixty-two for educational purposes."

CHAP. 120.—An ACT providing for the construction and repair of Roads and Bridges.

Passed December 4, 1863.

Be it enacted by the Legislature of West Virginia:

Authority of the board of public works to transfer roads and bridges to the counties.

1. The board of public works shall have power, by obtaining the consent of the board of supervisors, to transfer any road, bridge or turnpike to the county in which such road, turnpike or bridge may be. Such transfer shall be made by formal resolution to be entered on the record of the board of public works, and a copy of the same transmitted by the secretary of the board, to the clerk of the board of supervisors, for record in each county or counties where such road, turnpike or bridge may be; provided, the board of public works shall not transfer any road, turnpike or bridge which can in their opinion be made self-sustaining.

Transfer in such case, of the interests of private stockholders.

2. The private stockholders in any turnpike, road or bridge in which the state's interest has been transferred in accordance with the preceding section, with the consent of the board of supervisors of such county, may likewise, in lawful meeting of said stockholders, transfer and convey the interests of the said stockholders to the county or counties as aforesaid, by a process similar to that by which the state's interest is conveyed.

Authority of board of supervisors over county roads.

3. The board of supervisors of each county shall provide for establishing, keeping in repair, changing the location of, or vacating any road, and keeping a record of all the county and township roads in their respective counties, subject to the provisions of this act.

Notice of petition for establishing altering or vacating a road.

4. Previous to any petition being presented for the establishment, altering or vacating of a road, notice thereof shall be given by advertisement set up at the court house, and in three public places in each township through which such road is designed to be laid out, altered or vacated, at least thirty days previous to the meeting of the board of supervisors at which the petition shall be presented, stating the time when such petition will be presented and the substance thereof.

Appointment of viewers for that purpose.

Their duties and report.

5. Upon presentation of said petition, the board of supervisors, at a regular meeting, may appoint three or more viewers, a majority of whom may act, who after having been sworn for the purpose, shall proceed to view the ground and report to the board of supervisors the conveniences and inconveniences that will result as well to individuals as to the public, if such road be established, altered or vacated as proposed; and especially, if such road be established or altered, whether any yard, garden, orchard, or any part thereof, will, in such case, have to be taken. They shall also report the grade, costs and any facts and circumstances in their opinion useful in enabling the board to determine the expediency of establishing, altering or vacating such road. They may examine other routes than that proposed for any road, and report in favor of the one they prefer, with the reasons for their preference.

6. They shall report the names of the land owners on such route, and state which of them require compensation, the probable amount thereof, and what they believe such land owners are entitled to, if the road is established or altered as proposed, and such other matters as they may deem pertinent. A map or diagram of such route shall be returned with their report. They may employ a surveyor if they deem it necessary.

7. Upon the report, unless the board be against establishing, altering or vacating the road, it shall award process to summon the proprietors and tenants of the lands on which it will be established, altered or vacated, to show cause against the same. The summons shall be executed on such of them as are in the county, and on any agent therein of any proprietor not within the same.

Map of route.

Surveyor.

Proceedings of board upon report.

8. Upon the return of the said process so executed, if the application is to vacate a road, the board, on the report of the viewers, and other evidence, if any is offered, may vacate such road, taking care,

in every case of an established post road, not to vacate the same until another has been established; and if the application be to establish or alter a road, and the board has enough before it to enable it to fix upon a just compensation to the proprietors and tenants, and they are willing to accept what it deems just, it may determine the matter without a writ of *ad quod damnum*.

Writ of AD QUOD DAMNUM.

Jury.

9. But the writ shall be awarded, if desired by any proprietor or tenant, or if the board shall see cause to apply for the same. Such writ shall be awarded by the circuit court, commanding the sheriff to summon and empanel a jury of twelve freeholders of the county not related to either party, to meet on the lands of such proprietors and tenants as may be named in the writ, at a certain place and day therein also specified, of which notice shall be given by the sheriff to such proprietors and tenants. Such notice shall be served like the previous process.

Duties of jury.

10. The jury after being duly sworn by the sheriff, shall view the lands of the proprietors and tenants so named, and ascertain what will be a just compensation to each proprietor and tenant so named, for the lands proposed to be taken, and for the damages to the residue of his tract.

Second jury.

11. If the first jury cannot agree upon their inquest, they shall be discharged and another jury empannelled in like manner, and notice given as aforesaid.

Verdict.

Decision by board.

Restrictions as to establishment and vacation of roads.

12. When the verdict or inquest is agreed upon, it shall be signed by the jurors and returned by the sheriff, together with the writ, to the circuit court, which shall, if it is satisfied it is in conformity with the law, return the same to the board of supervisors, who shall determine whether the road shall be established or altered, as proposed. When any road is altered, it shall be vacated to the extent of such alteration and no farther. No road shall be established through any lot in an incorporated town, to which the provisions of this act apply, without the consent of the proprietor thereof.

Damages chargeable to county.

Exception.

13. When the road is established or altered, the county shall be chargeable with the compensation to the proprietors or tenants, and the cost of the inquest, except where the record shows that the sum allowed by the jury as compensation to any proprietor or tenant is not more than the board of supervisors, before the writ of *ad quod damnum*, had consented to allow him. Such proprietor or tenant in such case shall be adjudged to pay the costs occasioned by such writ.

Compensation of surveyor.

14. A statement in writing of the number of days every surveyor was employed in executing any such order, shall be sworn to and presented to the board of supervisors, who may allow to him a reasonable compensation, not exceeding two dollars per day, to be paid by the county.

Who liable to work on roads.

15. All male persons not under twenty-one or over fifty years of age, who have resided one month in this state, and who are not a county or township charge, shall be required every year to do and perform

two days work on the public roads, under the direction of the surveyor of roads within whose precinct they may respectively reside. But no person having performed the work required by this section, in any precinct, shall be required again to perform such work in any other precinct or county in the state, the same year.

Duties of surveyor of roads.

16. It shall be the duty of every surveyor of roads to order out every such person between the first day of April and the first day of October, annually, to meet, with proper tools, and perform the work aforesaid on the public roads within his precinct; and if any such person being personally warned by the surveyor, or by leaving a written notice at his usual place of abode, or by some person under the direction of the surveyor by whom such warning can be proven, shall refuse or neglect, having had at least three days' notice, to attend by himself or a substitute acceptable to the surveyor, on the day and at the time and place directed by the surveyor, or having attended shall refuse to obey the direction of the surveyor, or shall spend the time in idleness or inattention to the duties assigned him, every such delinquent shall forfeit and pay for neglect to attend, unless good cause be shown therefor, or for any of the offenses specified, one dollar for every such neglect or offense, which penalty, if not paid within ten days shall be recovered by action before any justice of the township, at the suit of the surveyor, with costs of collection.

Refusal to work on roads.

Penalty.

Exempts.

17. Persons who may be deemed by the board of supervisors unable to perform, or cause to be performed, the two days work required by this act, shall be exempted from the requisitions of the same for that year.

Residence of persons liable to road duty.

18. For the purposes provided for in the preceding sections of this act, the residence of any person who has a family shall be held to be where his family resides; and the residence of any other person shall be in the precinct wherein he boards.

Report of surveyor of roads to board of supervisors.

19. The surveyor of roads for each precinct shall make out and report in writing to the board of supervisors on the first day of their annual meeting to levy taxes:—*First,* The labor performed by persons required to work under the fifteenth section of this act. *Second,* The amount of money received on account of road tax, forfeitures and fines, and the amount of labor performed. *Third,* The application of the same. *Fourth,* The improvements which have been made on the roads and bridges during the year preceding such report, and the condition of such roads and bridges. *Fifth,* The estimated cost of keeping in repair the roads and bridges in his precinct for the ensuing year, after deducting the two days labor provided for in the fifteenth section of this act. *Sixth.* And shall make out a true list of the names of all persons within his precinct liable to road tax.

Levy of road tax.

20. Upon the report of the surveyors of the roads, the board of supervisors, at their annual meeting for making the county levy, shall, on all property subject to taxation for state purposes, levy a tax for the improvement of roads and building and keeping in repair bridges, and pay for services of surveyors, not exceeding the sum of ten cents on each hundred dollars worth thereof.

Bridge fund.

21. The board of supervisors may set apart such portion of the road tax by them levied as they may deem proper, to be applied to building and repairing bridges in their respective counties, which proportion shall be called a bridge fund, and shall be entered on the duplicate of taxes for the county in a seperate column from the other levies for road purposes, and shall be collected in money, and expended under the direction of the board of supervisors in the building or repairing of bridges.

Assessment of road tax.

22. The assessor or assessors of each county shall, immediately after the board of supervisors, at their annual session for that purpose, have determined upon the amount to be assessed for road purposes in their several precincts, make out a list for each road precinct, of the amount of road tax with which each individual stands charged, and transmit the same to the surveyor of roads in each precinct. The board of supervisors shall provide for paying the assessor a reasonable compensation for making out the aforesaid lists.

Working out road tax.

Authority of surveyor of roads to impress teams.

Disagreement as to pay for same.

23. The surveyor of roads shall allow each person assessed with road tax to work the same out himself or by a substitute, computing each day's work of an able bodied man at one dollar. He shall also have power to require a cart, wagon, plough or scraper, with a yoke of oxen or span of horses, and a man to manage them, to be furnished by any person having the same within his precinct, who shall have been assessed and shall be liable for road tax, and the person furnishing the same shall be allowed a fair compensation by the surveyor, and if the surveyor and the owner of the team, cart, wagon, plough or scraper cannot agree as to the amount of pay for such service, the same shall be submitted to two freeholders of their township, who may choose an umpire, and the amount thus ascertained shall be certified by the said freeholders and allowed by the surveyor.

Duties and authority of surveyor of roads.

24. The surveyors of roads shall open and make all new roads established by the county courts, and not made, as well as all roads that may be hereafter located under the provisions of this act. They shall repair and keep in good order the roads and bridges in their respective precincts; they shall warn all persons assessed and bound to work on the roads in their respective precincts, to meet to work on such roads according to law. They shall collect all road tax, forfeitures, fines ann penalties, and execute all lawful authority conferred upon them by the road laws of this State.

25. The surveyors of roads of any township shall have power to change the boundaries, increase or diminish the number of precincts in their respective townships, at a meeting called for the purpose, provided a majority of all the surveyors in such township concur and report any such change to the township clerk, who shall keep a record of the same. For the purpose of improving the road they shall have power, with the consent of the landholder through which their road may pass, to change the same where such change will not increase the length, or injure or require more work to keep the road in repair.

26. Each surveyor, within his precinct, shall erect and keep up, out of any money or road tax under his control, at the forks of every state

or county road a conspicuous guide-board or finger board, containing an inscription, in legible letters and figures, directing the way and distance to the town or towns, or public places, situated on each road, respectively.

Mile-posts and guide-board.

27. If any person shall wilfully demolish, throw down, alter or deface any mile-post or guide-board, every person so offending shall, upon conviction thereof before any justice of the proper county, be fined in any sum not exceeding ten dollars, with costs of suit, and the money, when collected, shall be paid over to the surveyor of roads in whose precinct the offense was committed.

Penalty for injuring same.

28. All public roads that have not been vacated according to law, heretofore established in pursuance of law, and now in use, are hereby declared to be public roads, subject to the provisions of this act.

Public roads not heretofore vacated.

29. The surveyor of any road may take from any convenient lands so much wood, stone, gravel or earth, as may be necessary to be used in constructing or repairing such road, or any bridge, and may, for the purpose of draining the road, cause a ditch to be cut through any lands adjoining the same, provided such wood and other articles be not taken from, and such ditch be not cut through, any lot in any town, without the consent of the owner. If the owner or tenant of any such lands shall think himself injured thereby more than the surveyor is willing to allow him, a justice, upon application to him, shall issue a warrant to three freeholders, requiring them to view the said lands and ascertain what is a just compensation to such owner or tenant, for the damage to him by reason of anything done under this section. The said freeholders, after being sworn, shall accordingly ascertain such compensation and report the same to the surveyor, who shall allow the same to said owner or tenant on his road tax.

Authority of surveyor of roads to take material from adjacent lands.

Proviso.

Claim by owner for damages.

30. Every surveyor of roads shall continue in office until his successor shall qualify, and within ten days after his successor shall have qualified, he shall pay over to such successor all money in his hands, and transfer all accounts, judgments, books, lists and papers connected with his office. Any surveyor of roads failing or refusing to comply with this provision shall be subjected to a fine of not more than twenty dollars, which, with the amounts of money, judgments and accounts in his hands, may be collected as other debts are collected and paid to his successor.

Duration of office of surveyor of roads.

His duties respecting his successor.

Penalty for failure.

31. All fines, forfeitures, penalties and donations collected under this act shall be appropriated agreeably to the provisions of this act, to the improvement of roads and bridges in the precincts in which they are forfeited and donated.

Appropriation of fines, etc.

32. Not less than thirty feet of land shall be condemned for public roads, but in the establishing of such road, the board of supervisors may direct that the road may be constructed of less width than thirty feet, and no bridge shall be less than twelve feet wide; and the board may order a public road adjoining a town or village to be therefrom wider for a distance of one-half mile, but in no case to exceed sixty feet in width; provided that the grade of any road hereafter established shall not exceed an elevation of five degrees.

Width of roads,

And bridges.

Grade of roads.

Qualification of surveyor of roads

33. Every surveyor of roads, before entering on the duties of his office, shall himself, with one or more good securities, execute and deliver to the clerk of his township a bond in a penalty of one hundred dollars, conditioned for the faithful performance of the duties of his office, and the payment of any money in his hands at the expiration of his term of office to his successor. If any surveyor shall fail to pay over such money in his hands to his successor, it shall be the duty of said successor to institute a suit before a justice upon his said bond, for the use of the precinct, and recover from him and his sureties such damages as may be awarded against him for any breach of his official bond, and costs.

Suit on bond for failure to pay over to successor.

Punishment for obstructing roads or bridges.

34. If any person or corporation shall obstruct any public road or bridge, and suffer such obstruction to remain to the hindrance or inconvenience of the public, or shall change the line of, fill up or dig out the bed of such road, or in any other manner injure such road or bridge, such person or corporation shall be subject to an action before some justice, at the suit of the surveyor, or any person who may be liable to injury by such obstruction, in the precinct in which such road or bridge is situate, and shall be liable for damages. The justice in such suit shall estimate the measure of such damages at a full compensation to the public for the loss of or any injury to such road or bridge, and the amount of damage, after paying costs, shall be paid to the surveyor of roads, to be accounted for and expended in the precinct according to the provisions of this act.

Punishment of surveyor of roads for refusing to serve.

35. Any person who shall, with his consent, have been duly elected or appointed surveyor of roads and shall refuse to serve, shall forfeit the sum of ten dollars; provided that no person shall be required to serve for two consecutive terms.

Compensation of surveyor of roads

36. Each surveyor shall be allowed for his services for warning the hands, superintending the work, and for the time necessarily spent by virtue of his office, one dollar and fifty cents per day out of his road tax, and any money in his hands unexpended, after deducting from his time two days work as required by the fifteenth section of this act. Any surveyor of a road who shall fail to perform any duty required of him in this act, except refuse to serve or fail to account for and pay over money in his hands, shall pay a fine of not less than five nor more than thirty dollars, and shall be liable to presentment before a grand jury and be fined by the circuit court of his county, for failing to keep his roads in good repair, as required by this act, if at the time of failing to do so, he shall not have expended the money and labor of his precinct.

General provision as to failures by same.

Obstruction of roads or bridges from natural causes.

37. At any time during the year, when any public road shall be obstructed by the fall of timber or any other cause, or any bridge shall be impaired so that the travel on such road will be unsafe, it shall be the duty of the surveyor to order out such number of the hands of his precinct as he may deem necessary to remove such obstruction or repair such bridge.

[illegible]

[illegible] If any person shall, under the direction of the surveyor, perform more labor on the public roads than may be due from him, the surveyor shall give such person a certificate specifying the amount of extra labor so performed, which certificate shall be received for the amount specified in discharge of any labor or road tax within the same precinct which may be due from the holder of such certificate in any succeeding year.

Erection or removal of gates across roads.

39. The board of supervisors, at any meeting, shall have power to permit gates to be erected across any road, or to remove gates that have been erected across any road; provided, that notice of the application therefor shall have been posted up at the court house, and at three prominent places near where the said gate or gates are desired to be erected or abated, at least twenty days before such meeting of the board.

Foot-bridges.

40. Surveyors of roads may put up and keep in repair such foot-bridges as they may deem necessary for public convenience.

The building or repair of bridges.

Appointment of commissioners by board of supervisors.

Proposals.

Bond of contractor.

41. When a bridge is necessary and of such size and importance that it would not be practicable for a surveyor to construct, the board of supervisors shall appoint commissioners who shall give reasonable notice in some newspaper in the county, or at the front door of the court house, that proposals will be received for the building or repair of such bridge. Upon receiving such proposals, they shall determine which they will accept, and proceed to take a bond with sufficient surety in a penalty of double the amount the said contractor is to receive for the faithful performance of his said contract. Such bond and contract shall be approved and ratified by the board of supervisors and the fact entered of record. The said contract, after such approval and ratification, shall be binding upon the county and such contractor.

Disagreement between two counties respecting a bridge or road.

Remedy for failure on part of board of supervisors.

42. When it becomes necessary to build or repair a bridge across any stream on a line between two counties, or to construct or keep in repair any road, or to connect roads, between two counties, and the authorities of such counties disagree, it shall be the duty of the board of supervisors of each county to appoint commissioners to meet and arrange the matter; and if they should disagree, they may call to their aid a commissioner or commissioners from an adjoining county to assist them in their decision; which decision, when confirmed by the board of supervisors of each county shall be binding. If the board of supervisors of any county, upon being required to do so, shall fail to appoint commisioners, or if either board of supervisors shall fail in any respect to do on its part what should be done towards the work, the remedy by mandamus shall lie before the circuit court of the county whose board of supervisors is complained of, on behalf of the board of supervisors of the other county. And the circuit court shall compel the board of supervisors complained of, to do what ought to be done in the matter.

Application of act.

43. This act shall not be held to apply to any city or town having by its charter, or any law of the State, jurisdiction and control of the streets, alleys and roads within its corporate limits.

Laws repealed.

44. The fifty-second chapter, and the fifty-second and fifty-third sections of the sixty-first chapter of the Code of Virginia, second edition, and all other acts inconsistent with this act, are hereby repealed.

CHAP. 121.—An ACT to require Bonds from certain Officers.

Passed December 5, 1863.

Be it enacted by the Legislature of West Virginia:

Bond required of county treasurer and clerk of board of supervisors.

1. Every county treasurer and clerk of the board of supervisors before entering on the discharge of the duties of his office, shall give bond, with security to be approved by the board of supervisors of the county, conditioned for the faithful discharge of the duties of his office, and for accounting for and paying over, as required by law, all money which may come to his hands by virtue thereof; which bond of the county treasurer shall be filed in the office of the clerk of the said board, and the bond of the clerk in the office of the recorder. The penalty of the bond of the county treasurer shall not be less than one thousand nor more than ten thousand dollars, and the bond of the said clerk not less than one nor more than three thousand dollars, as the said board shall from time to time appoint.

Where filed.

Penalties.

Failure to give

2. If any county treasurer or clerk of the board of supervisors fail to give such bond, within thirty days after his election, his office shall be thereby vacated, unless further time for giving bond be allowed by resolution of the board of supervisors.

Law repealed.

3. The act relating to official bonds, passed June twenty-ninth, eighteen hundred and sixty-three, so far as it is not inconsistent with this act, shall be held applicable to the bonds of county treasurers and the clerks of the boards of supervisors.

CHAP. 122.—An ACT to regulate the election and qualification of Justices and Constables, and to prescribe in part their powers and duties.

Passed December 7, 1863.

Be it enacted by the Legislature of West Virginia:

ELECTION AND QUALIFICATION.

Election of justices.

1. At the first township election, and the annual township election to be held in the year eighteen hundred and sixty-seven, and every fourth year thereafter, the voters of each township shall elect a justice, and an additional justice if the white population of their township exceed twelve hundred.

And constables.

2. And at the first township election, and the annual township election to be held in the year eighteen hundred and sixty-five, and every second year thereafter, they shall elect as many constables as justices.

Terms of office.

3. The terms of office of the justices and constables first elected shall respectively commence as soon as they have taken the proper oaths of office and given bond as required by law, but shall expire as if the same had begun on the twentieth day of June, eighteen hundred and sixty-three.

4. The terms of those subsequently elected, except such as may be elected to fill vacancies, shall commence on and include the twentieth day of June next after the election at which they are chosen and con-

tinue for the periods prescribed by law, that is: for justices, four years, and for constables, two years; and in both cases, thereafter, until their successors are elected and qualified.

Vacancies—how caused.

5. The office of justice or constable shall be deemed vacant not only when he dies, resigns or his removed from office, but also when he removes from the township in which he was elected, or fails to take the proper oaths of office and give his official bond within thirty days after his election.

Resignation.

6. The resignation shall be by writing, signed by the justice or constable, and delivered to the clerk of the board of supervisors of the county, or if there be no such clerk, to the judge of the circuit or the governor.

Removal from office.

7. A justice or constable may be removed from office by the board of supervisors of the county, in the same manner and for the same causes as county officers are removable by said board, two-thirds of the whole number elected to said board concurring in such removal.

Vacancy—how filled.

8. When the office of justice or constable is vacant, the vacancy shall be filled by election for the unexpired term in the manner prescribed in the forty-third and forty-seventh sections of the act passed November thirteenth, eighteen hundred and sixty-three, entitled "An Act to regulate elections by the people."

9. But where a county has not been divided into townships, the governor, when vacancies exist, may appoint and commission justices and constables for the magisterial districts into which the said county was divided under the constitution and laws of the state of Virginia, not exceeding two justices and one constable for any one district; and the officers so commissioned shall hold their offices until the county is divided into townships and their successors respectively are elected and qualified.

Official oath.

10. Every justice and constable, before proceeding to exercise the authority or discharge the duties of his office, shall take the proper oaths of office, under the penalty prescribed in the fifth section of the act concerning oaths and affirmations, passed June twenty-sixth, eighteen hundred and sixty-three. A certificate thereof shall be filed with the recorder of the county, according to the sixth section of the said act.

Bond.

11. He shall also give bond, payable to the state of West Virginia, with one or more sureties to be approved by the recorder and prosecuting attorney of the county, or the judge of the circuit, and filed in the office of the recorder, conditioned for the faithful discharge of the duties of his office, and for accounting for and paying over, as required by law, all money which may come to his hands by virtue thereof. The penalty of the bond in the case of a justice shall be not less than one thousand nor more than five thousand dollars, and in the case of a constable not less than one thousand nor more than three thousand dollars. The provisions of the act, passed June twenty-ninth, eighteen hundred and sixty-three, entitled "An Act relating to official bonds," so far as they are not inconsistent with this act, shall be held applicable to the bonds of justices and constables.

OF THE CIVIL JURISDICTION OF JUSTICES.

Jurisdiction as to place.

12. The civil jurisdiction of a justice shall be limited to the township in which he was elected, except as hereinafter provided.

13. A justice of one township may issue a summons to the defendant to appear before the justice of another township in the same county, if the suit be cognizable by the latter.

14. And where any township has but one justice, if he be under any disability to act, or the office be vacant, any other justice in the same county may exercise jurisdiction within such township.

Oaths, depositions, &c.

15. Where any oath may lawfully be administered, or affidavit or deposition taken, within any township, it may be done by a justice thereof, unless otherwise expressly provided by law.

Deeds, &c.

Subpœnas.

16. A justice, under such regulations as are prescribed by law, may take within his township the acknowledgment of deeds and other writings, and the privy examination of married women respecting the same; and issue subpœnas for witnesses, and coerce their attendance in any suit pending before him, or any matter in which he may lawfully take depositions.

Jurisdiction as to amount in dispute.

17. The jurisdiction of justices, within their several townships, shall extend to all civil actions for the recovery of money or the possession of property, including actions in which damages are claimed as a compensation for an injury or wrong; provided, the amount of money or damages, or the value of the property claimed, does not exceed one hundred dollars, exclusive of interest and costs; subject, nevertheless, to the following exceptions:

Cases where they have not jurisdiction.

Real estate.

18. They shall not have cognizance of any action—*First*, To recover damages for an assault, or an assault and battery; or, *Second*, For false imprisonment; or, *Third*, For malicious prosecution; or, *Fourth*, For slander, verbal or written; or, *Fifth*, Against a justice for misconduct in office; or, *Sixth*, On any contract for real estate, or in which the title to real estate is sought to be recovered or is drawn in question, except actions for trespass on real estate, or damages to the same or to rights pertaining thereto, in which the justice shall have jurisdiction, if the damages claimed do not exceed one hundred dollars, and the real estate be in his township; and no claim of title set up by the defendant shall affect the jusisdiction hereby given.

Penal bond.

19. When the action is on a penal bond, the amount of damages claimed for the breaches alleged, and not the penalty, shall be considered in determining the question of jurisdiction.

Effect of releasing surplus.

20. When a balance is found in favor of a party, either by the verdict of a jury, or award of arbitrators, or upon a hearing before the justice, exceeding the sum for which a justice is authorized to give judgment, such party may release the excess and take judgment for the residue.

21. If a justice be a party to the suit, or be interested in the result thereof otherwise than as a resident or tax payer of the township or county, or be related to either of the parties, as father, father-in-law, son, son-in-law, brother, brother-in-law, nephew, uncle or cousin, guardian or ward, or be a material witness for either party, he shall not take cognizance thereof. But when the justice of the proper township is under such disability, any other justice in the same county may exercise jurisdiction in the case, if there be no other objection.

When justice is interested, or relation of party.

22. In case of sickness or disability, or necessary absence of a justice, at the time appointed for any trial or proceeding before him, another justice of the same county may, at his request, attend in his place, and shall thereupon become vested with his authority for the time being. The attending justice shall in such case make and sign proper entries of the proceedings in the docket of the absent justice.

Absence or disability of justice.

23. The civil jurisdiction of a justice shall not extend to any action unless the cause of action arose in his township, or the defendant, or one of the defendants, resides therein, or being a non-resident of the state, is found or has effects or estate within the township.

Jurisdiction as to place.

24. When two or more persons can be properly made defendants to the suit, and they reside in different townships, the suit may be brought in either township; and the justice, before whom it is brought, may direct a summons to the constable of any township in the state in which one or more of such defendants reside or are found; and the constable shall serve the same and make due return thereof. But one day, at least, shall be allowed in such case, between the issue of the summons and the trial, for every ten miles from the residence of such defendant to the place where the suit is to be tried, computing the distance by the usual route of travel; or the plaintiff may, at his option, dismiss his suit as to the defendants not found within the township where the suit is brought, and proceed against those served.

When there are several defendants.

25. If any debtor shall appear before a justice without process, and confess that he is indebted to another in a specified sum of money, it shall be lawful for such justice, on the application of the creditor, to render judgment on such confession against the debtor for the sum so specified, not exceeding three hundred dollars including interest to the time of confession.

Confession of judgment.

26. But no judgment shall be rendered on such confession unless the following requisites be complied with: *First,* The defendant must appear personally before the justice. *Second,* The confession must be in writing, signed by the defendant and filed with the justice. *Third,* If the confession be for a sum exceeding fifty dollars, it must be accompanied by the affidavit of the defendant, stating that he is honestly indebted to the plaintiff in the sum named in such affidavit, over and above all just demands which he has against the said plaintiff, and that the confession is not made with a view to defraud any creditor.

27. A judgment rendered on confession may be impeached by any creditor affected thereby; and if confessed with intent to delay, hinder or defraud creditors, shall be void as to them.

Undertakings.

28. Subject to the provisions of the twenty-third section of this act, a justice shall have jurisdiction of actions on the undertakings which may be given pursuant to this act; and suit may be brought on any such undertaking before the justice or court having jurisdiction, by any person sustaining loss or damage by reason of the non-performance thereof.

HOW ACTIONS BEFORE JUSTICES ARE COMMENCED.

How suits are begun.

29. Actions before justices are commenced by summons, or by the appearance and agreement of the parties without summons.

And when.

30. In the former case, the action is deemed commenced upon the delivery of the writ to be served, and the constable shall note thereon the time of receiving the same. In the latter case, the action is deemed commenced at the time of docketing the case.

RIGHT TO APPEAR BY ATTORNEY.

Suit may be conducted by agent.

31. Any plaintiff or defendant in an action before a justice, unless he be under twenty-one years of age, may appear and conduct his suit or defense in person, or by agent or attorney.

The authority.

32. A party authorized to appear by agent or attorney, may appoint any person, except a justice or constable, to act as such. The authority may be either written or verbal; but unless the party appear in person before the justice and name the person who is to act on his behalf, the authority must be proved either by the agent or attorney himself, or other competent evidence, or must be admitted by the opposite party; otherwise the justice shall not permit any person to appear for another.

Effect of notice to or presence of agent.

33. When an agent or attorney has been appointed in the suit, the service of any notice in the suit on the agent or attorney shall be equivalent to service on his principal; and the presence of such agent or attorney at any proceeding therein have the same effect as the presence of the party he represents.

INFANT PLAINTIFF OR DEFENDANT.

Guardian AD LITEM.

34. Where a party to the action is under the age of twenty-one years, a guardian for the suit must be appointed for him by the justice, as follows: *First*, If the infant be plaintiff, the appointment must be made before the summons is issued, on the application of the infant, if he be of the age of fourteen years or upwards; if under that age, on the application of some friend. The consent in writing of the guardian to the appointment, and his agreement to be responsible for costs if he fail in the action, must be filed with the justice. *Second*, If the infant be defendant, the guardian must be appointed and consent to act as such before the trial. It is the right of the infant defendant to nominate his own guardian, if the infant be fourteen years of age or over, and the proposed guardian be present and consent to serve; otherwise the justice shall appoint some suitable person who gives such consent. The guardian for a defendant shall not be liable for any costs in the action.

PARTNERS.

35. Persons associated as partners in any trade or business may sue as such before a justice in the firm name by which such partnership is usually known; and it shall not be necessary to allege or prove in such suit who are the persons composing the partnership.

How partners may sue.

THE SUMMONS—FORM OF.

36. The style of the summons shall be, "The state of West Virginia, —— county." It shall be dated the day it is issued, signed by the justice issuing the same, and directed to the constable of the proper township; unless a person be specially deputed by the justice to serve it, in which case it shall be directed to such person by name. It must contain the names of the plaintiffs. It must also contain the names of the defendants, if known, or if unknown, give a description of them. It shall command the constable or person who is to serve the same to summon the defendants to appear before the proper justice at a time and place specified therein, and must describe the cause of action in such general terms as to apprize the defendants of the nature of the claim against them; and there must be stated therein the amount, excluding interest and costs, for which the plaintiff will claim judgment if the defendants fail to appear. If they fail to appear, judgment shall not be rendered for a larger amount, but interest and costs may be adjudged in addition to the amount so stated.

Requisites of the summons.

37. A new summons may, if the case so require, be issued when there has been no service of the previous summons or no return made thereof. It shall be endorsed by the justice issuing the same, "second summons" or "third summons," as the case may be.

Second and third summons.

SPECIAL CONSTABLE.

38. A justice, whenever he deems it expedient and proper, may, on the request of a party, appoint a special constable to act in a particular case, or to serve any process or order therein; and the person so deputed shall as to such cause, process or order, have the powers, discharge the duties and receive the fees of the office.

Justice may appoint special constable,

39. The justice shall note such appointment on his docket, and with his sureties, be liable on his official bond for any neglect of duty or illegal proceeding of such person in the matter for which he was deputed.

But is liable for his acts.

WHEN DEFENDANT'S NAME IS NOT KNOWN.

40. When the name of a defendant is not known to the plaintiff, the summons may be issued against such defendant by a fictitious name, or any description to designate the person intended, and shall not be abated for that cause if served on the proper person; but the justice, when the truth shall appear, shall amend the proceedings on such terms as he deems reasonable, and thereafter proceed as if such defendant had been sued in his right name.

Suit when name is unknown.

RETURN DAY OF SUMMONS.

41. The time specified in the summons for the defendant to appear, must be not more than thirty days from its date, except in the case specified in the twenty-fourth section.

Time for appearance.

SERVICE OF THE SUMMONS.

How summons served.

42. If the defendant be found, the summons shall be served by reading the same to him, or, if required, by delivering him a copy thereof; if he be not found, by leaving a copy thereof at his last place of abode, in presence of some one of the family, of suitable age and discretion, who shall be informed of its contents.

Acknowledgment of service.

43. An acknowledgment in writing of the service of a summons by a defendant or his attorney, or his voluntary appearance to the action, is equivalent to service.

Corporation.

44. A summons against a corporation may be served upon the president, mayor or chief officer thereof; or if there be no such officer, or he be absent, on any officer, director, trustee or agent of the corporation, at its principal office or place of business.

Branch bank.

45. If the suit be against a bank of circulation, and be brought in a township in which it has a branch, service on the president or cashier of such branch will be sufficient.

Foreign corporation.

46. If the suit be against a foreign corporation doing business in this state, service may be made by leaving a copy of the summons at any office or place of business of such corporation in the township, with any person found in charge thereof.

Minor.

47. When the defendant is a minor under the age of fourteen years, the service must be upon him and upon his guardian or father; or if neither of these can be found, then upon his mother, or the person having the care or control of such minor, or with whom he lives. If neither of these can be found, or the minor be fourteen years of age or over, service on him alone shall be sufficient.

Suit by agreement.

48. When the parties agree to enter without process before a justice any action of which such justice has cognizance, such justice shall enter the same on his docket and proceed to trial, judgment and execution, in all respects in the same manner as if a summons had been issued, served and returned.

ARREST OF DEFENDANT BEFORE TRIAL.

Order of arrest before trial.

49. An order for the arrest of a defendant in a civil action may be made by the justice before whom the same is brought, when there is filed in his office an affidavit of the plaintiff or any credible person, made before any person authorized to administer oaths, showing the nature of the plaintiff's claim, that it is just, the amount thereof as near as may be, and the existence of one or more of the following particulars:—*First*, That the defendant has removed or is about to remove any of his property out of the state, with intent to defraud his creditors; or, *Second*, That he is about to convert his property or any part thereof into money or securities with like intent; or, *Third*, That he has assigned, disposed of or removed his property or any part thereof, or is about to do so, with like intent; or, *Fourth*, That he has property or rights in action which he fraudulently conceals; or, *Fifth*, That he fraudulently contracted the debt or incurred the liability for which the action is to be or has been brought.

50. The order of arrest shall not be issued until there has been executed by one or more sufficient sureties of the plaintiff, a written undertaking to the effect that the plaintiff will pay the defendant all damages he may sustain by reason of the arrest, should it thereafter appear that the order was wrongfully obtained, not exceeding double the amount of the plaintiff's claim as stated in the affidavit. Undertaking of plaintiff.

51. The order of arrest may accompany the summons or be made at any time afterwards before judgment. It shall not be deemed to authorize an arrest out of the township in which it was issued. Order, when issued. Arrest must be in the township.

52. The order of arrest shall be addressed and delivered to a constable of the proper township. It shall state the names of the parties, the amount of the plaintiff's claim as stated in the affidavit, be signed by the justice issuing it, and shall require the constable to arrest the defendant and bring him forthwith before the justice. Requisites of the order.

53. The officer receiving the said order shall forthwith arrest the defendant; and unless the plaintiff's claim and the costs are paid, or the defendant is discharged by the order of the plaintiff, shall take him forthwith before a justice and keep him in custody until discharged by law. Duty of the officer.

54. Upon return of the said order executed, the trial shall proceed unless for good cause shown, on the application of either party, or at the instance of the justice himself, the same shall be continued as in other suits before justices. If the trial be continued for any period, the defendant shall be discharged from custody upon executing, with one or more sufficient sureties, a written undertaking to the plaintiff, to be filed with the justice to the effect that if judgment be rendered in the action against the said defendant, he will either satisfy the same or render himself to answer the process on such judgment. But in no case shall the defendant be detained in custody where such continuance is for more than forty-eight hours, unless it was made at the instance or with the consent of the defendant himself. Trial—continuance.

ATTACHMENT OF DEFENDANT'S PROPERTY AND CREDITS.

55. The plaintiff may have an order of attachment against the property of the defendant in a civil action before a justice, on filing with the justice his own affidavit, or that of any credible person made before any person authorized to administer oaths, stating the nature of the plaintiff's claim, that it is just, the amount the affiant believes the plaintiff ought to recover, and the existence of some one or more of the following particulars: *First,* That the defendant, or one of the several defendants, is a foreign corporation, or is a non-resident of the state; or, *Second,* Has absconded with intent to defraud his creditors; or, *Third,* Has left his residence in order to avoid the service of process; or, *Fourth,* So conceals himself that a summons cannot be served upon him; or, *Fifth,* Is removing or about to remove his property or a part thereof out of the state with the intent to defraud his creditors; or, *Sixth,* Is converting or about to convert his property or a part thereof into money or securities, with like intent; or, *Seventh,* Has assigned, disposed of or removed his property or a part Affidavit to obtain attachment.

thereof, or is about to do so, with like intent; or, *Eighth*, Has property or rights in action which he conceals; or, *Ninth*, Fraudulently contracted the debt or incurred the liability for which the suit was brought or is about to be brought.

Claims for tort.

56. The order of attachment may be issued whether the action be founded on contract or be brought to recover damages for a wrong, if the justice have jurisdiction in the case.

When order may issue.

When returnable.

57. The order may be made at the commencement of the action to accompany the summons, or at any time afterwards before judgment. If issued at the commencement of the action, the return day shall be the same as that of the summons; when issued afterwards it shall be executed and returned forthwith.

Undertaking.

58. Unless the ground of attachment is that the defendant, or one or more of the defendants, is a foreign corporation or a non-resident of the state, the order of attachment shall not be issued until an undertaking, signed by one or more sufficient sureties of the plaintiff, be filed with the justice, to the effect that the plaintiff will pay the defendant all damages he may sustain by reason of the attachment, not exceeding double the amount of the plaintiff's claim, should it appear thereafter that the order was wrongfully obtained.

For debt not due.

59. When the ground of attachment is that the defendant is removing or about to remove his property with intent to defraud his creditors, suit may be brought and an order of attachment issued upon proper affidavit and undertaking, as aforesaid, though the plaintiff's demand be not due and payable.

Requisites of order.

60. The order shall be addressed and delivered to the proper officer, or to the person deputed to execute the same, and shall command him to attach the personal property and credits of the defendant found within the county and not exempt by law; or so much thereof as will satisfy the plaintiff's claim, with interest and costs. The amount of the plaintiff's claim shall be stated in the order as it is in the affidavit.

Where it may be executed.

61. The order of attachment, and the summons, if there be one, accompanying the same, may be executed anywhere within the county in which they are issued.

How executed on property.

62. The person to whom the order is addressed shall go to the place where the property is to be found, and there, in the presence of one or more credible persons, declare that by virtue of the said order, he attaches the property at the suit of the plaintiff; and with or one more householders of the county, who, after being first sworn by the officer for that purpose, shall make a true inventory and appraisement of all the property attached, which shall be signed by the officer and householder, and returned to the justice with the order. Except as provided in the following section, he shall take the property into his custody and hold it subject to the order of the justice.

When property must be left with owner.

63. If the defendant, or the person in whose possession the property is found, with one or more sufficient sureties, sign and deliver to the officer levying the attachment, or file with the justice at any time

before judgment, an undertaking to the effect that the property so attached, or its appraised value in money, shall be forthcoming to answer the judgment in the action, it shall be delivered to him or permitted to remain in his possession. Such undertaking, when delivered to the officer, shall be by him delivered to the justice.

64. Different attachments of the same property may be made, and one inventory and appraisement shall be sufficient. Where there are several orders of attachment against the property and credits of the same defendant in the hands of the same officer, they shall be executed in the order in which they were received. The lien of all attachments on property or credits shall be in the order they are executed.

Several orders against same property.

Priority of lien.

65. Where several attachments are executed on the same property, or the same persons are made garnishees thereto, the justice issuing the attachment which has priority of lien, on motion of any of the plaintiffs, may determine the amounts and priorities of the several attachments, and the proceeds shall be applied accordingly.

Priority—how decided.

66. When any order of attachment is issued, it shall be served on the defendant, if the same can be done within the county, in the manner prescribed for the service of a summons; and the person to whom the same was delivered to be executed shall make return thereof, with all his proceedings in writing, and the inventory and appraisement of the property, if any, attached thereto. In such return he shall state the names of the garnishees, if any, notified to appear, and the time each garnishee was served with the order and notice.

Service on defendant.

Return.

67. If it appear by the said return that property has been attached or any garnishee notified to appear, but that the order of the attachment has not been served on the defendant, the justice, unless the defendant appear to answer the plaintiff's action or confess the same, shall issue a second summons to the defendant, returnable not less than thirty nor more than sixty days after its date, stating that property or credits of the defendant have been attached for the plaintiff's claim; and the person to whom such summons is delivered to be executed, shall forthwith cause a copy thereof to be posted at the front door of the court-house and two other public places in the county, and shall serve the same on the defendant, if he can be found in the county before the return day thereof. If such second summons be returned served upon the defendant, or the defendant appear to the action, or it be returned that, after diligent inquiry, the defendant could not be found within the county, and that copies were posted as aforesaid, the justice may proceed to hear and determine the suit as in other cases.

Second summons

68. A judgment obtained before a justice, where the defendant shall not have been personally served with either the attachment or summons, and shall not have appeared to the action, shall, except as to the property and credits attached, be presumptive evidence only of the indebtedness of the defendant; and the execution issued on such judgment shall not be levied upon any other property or credits than those so attached; nor shall the defendant in such case be barred of any set-off he may have against the plaintiff.

Judgment binds the property only.

Sale of perishable property.

69. When the property in the custody of the officer under an order of attachment is of a perishable nature or expensive to keep, the justice may issue his order to the officer to sell the same at public auction, at such time and place as in the said order shall be specified; and the proceeds of such sale shall be paid over to the justice, and applied as other money realized from the sale of the property attached is to be applied.

Expenses.

70. The officer shall be allowed by the justice the reasonable expenses of executing the order of attachment and keeping the attached property, to be paid by the plaintiff and taxed in the costs.

GARNISHEE IN ATTACHMENT CASE.

Order on garnishee—how obtained.

71. Where the plaintiff shows, by his own affidavit or that of another, good reason to believe that any person or corporation named in such affidavit, within the county in which the action is brought, has personal property of the defendant in his possession or control, or is indebted to the defendant, whether such debt be due or not, or that any stock in such corporation is held by or for the benefit of the defendant, the justice in the order of attachment, or by endorsement thereon, or by order subsequently issued at any time before judgment in the action, may direct such person or corporation to be served with the order of attachment, and with a written notice to appear before the justice on the return of such order, or such other time as the justice may specify in the notice, and answer respecting the personal property of the defendant in their possession or control and the debts they owe him.

How served.

72. The order of attachment and notice may be served on the garnishee in the same manner as a summons is served.

Examination of garnishee.

73. The garnishee, in accordance with the notice, shall appear before the justice, and answer under oath all lawful questions, approved by such justice, put to him concerning the personal property of the defendant in his possession or control, and the debt owing by him to the defendant; and in the case of a corporation, concerning any stock therein held by or for the benefit of the defendant. Where a corporation is garnishee, the justice may require any officer thereof designated by him to appear and answer. If the garnishee admit property and credits of the defendant to be in his hands subject to the attachment, sufficient to satisfy the plaintiff's claim, with interest and costs, no further question shall be asked.

Lien of the attachment.

74. Whatever is in the hands or under the control of the garnishee or is due by him, belonging to the defendant or owing to him, interests in real estate excepted, shall be bound by the attachment to the extent of the plaintiff's claim with interest and costs, from the time of the service of the order of attachment and notice.

Garnishee may pay his debt, &c.

75. A garnishee may pay the money owing to the defendant [illegible] him to the officer having the order of attachment, or to the justice, and shall be discharged from liability to the defendant for any money so paid, not exceeding the plaintiff's claim with interest and costs. He shall not be subject to costs beyond those caused by his resistance of

Costs.

the claim against himself; and if he discloses truly the property in his hands or control, and the amount owing by him, and deliver over and pay the same as the justice may order, he shall be allowed his costs.

Failure to answer.

76. If the garnishee, or any officer of a corporation thereto required by the justice, fail to appear and answer, or appear and refuse to answer, the justice may proceed against him as for contempt.

Garnishee may be ordered to pay, &c.

77. If it appear by the oath of a garnishee, or other evidence, that the garnishee at the time of the service of the order of attachment and notice upon him, or afterwards, had in his possession or control or owed anything, subject to the attachment, and such debt be due and payable, the justice may order the delivery of the property or the payment of the money to himself or to a constable of the township, unless the garnishee, or some one for him, with one or more sufficient sureties, sign and file with the said justice an undertaking to the effect that the property and money shall be forthcoming to answer the judgment in the action.

When plaintiff may sue garnishee.

Debt not due.

78. If the garnishee fail to appear and answer, or appear and refuse to answer, or if, having answered, his disclosure is not satisfactory to the plaintiff, or if he fail to deliver the property in his possession or control, or pay the money owing by him as the justice may order, or to give the undertaking specified in the preceding section, the plaintiff may proceed against him in an action in his own name, and recover therein the amount owing by the garnishee to the defendant in the original action, and the value of the personal property of the said defendant in the hands of the garnishee, not exceeding however the sum he shall show himself entitled to as against the said defendant, with interest and costs, and the additional costs of the proceeding against the garnishee. If the debt be not due by the garnishee, the plaintiff may proceed against him when it becomes due. The judgment against the garnishee shall be enforced in the same manner as other judgments of justices.

Costs of suit against garnishee.

79. If the plaintiff proceed against the garnishee on the ground that the disclosure was not satisfactory, he shall pay the costs of such action, unless it appear by the evidence that such disclosure was incomplete or untrue.

Judgment against or for garnishee—in what cases.

80. Final judgment shall not be rendered against the garnishee, until the action against the defendant in the original suit has been determined; and if in such action, judgment be rendered for the said defendant, the attachment shall be discharged (except as provided in the next section,) and the garnishee recover his costs. If the plaintiff recover judgment against the defendant in the original suit, and the garnishee deliver over the property and pay the money in his hands belonging or owing to the said defendant as the justice shall order, the garnishee shall be discharged, and be allowed his costs out of the property and money surrendered.

APPEAL IN ATTACHMENT CASE.

81. If judgment be rendered in favor of the defendant whose property was attached, the property or its proceeds shall be returned to

Appeal—effect of.

him; unless the plaintiff within a certain time, to be fixed by the justice, which time shall not exceed ten days, give security for an appeal to the circuit court of the county. During the time so fixed by the justice, the attachment shall continue in force; and in case of an appeal by either party, shall remain in force until otherwise adjudged by the circuit court.

JUDGMENT—HOW ENFORCED.

Sale of property attached.

82. If the judgment be rendered for the plaintiff against defendant in the action, it shall be satisfied as follows: So much of the property remaining in the hands of the officer, (after applying the money arising from any perishable or other property, and the money received or recovered from the garnishee,) as may be necessary to satisfy the judgment, shall be sold by order of the justice under the same regulations as if it had been levied on by execution, and the money arising therefrom be employed to satisfy the judgment with the interests and costs; and the excess, if any, shall be paid to the defendant.

Property to be retaken.

83. The justice may order the officer to repossess himself, for the purpose of selling it, of any of the attached property which may have been delivered or permitted to remain in possessionof any person pursuant to the sixty-third and sixty-seventh sections of this act; and the officer under such order shall have the same power to take the property as he would have under an order of attachment. Or, the justice may issue his order to the persons who signed the undertaking specified in those sections, requiring them to have the property and money mentioned therein forthcoming to answer the judgment on or before a certain day to be stated in such order; which order shall be served in like manner as a summons; and if the property and money be not delivered and paid to the justice or the officer serving the said order, on or before the return day thereof, the justice, if good cause be not shown to the contrary, may render judgment in favor of the plaintiff against the persons on whom such order was served, for the said money and the value of the said property, or so much thereof as shall be sufficient to satisfy the original judgment with interest and costs thereon, and the costs incurred under the said order. The judgment so rendered against the said persons may be enforced as other judgments of justices.

Proceedings when property not forthcoming.

WHEN THE PROPERTY IS CLAIMED BY ANOTHER.

Trial of right of property.

84. If any property which has been attached be claimed by any person other than the defendant in the action, the right thereto may be tried as in the case of property taken on an execution issued by a justice.

REAL ESTATE—PRIOR LIENS ON PROPERTY ATTACHED.

Real Estate.

85. No interest in real estate shall be attached under or by virtue of any order of attachment issued by a justice, or be in any way bound by the same; and no prior lien on any property or credits attached shall be impaired by the attachment.

Prior liens.

THE PLAINTIFF MUST SUE FOR HIS WHOLE CLAIM.

Plaintiff barred of part not sued for.

86. When the plaintiff has several demands against the same defendant, founded on judgment, or on contract express or implied, he

must bring one action for the whole amount due and payable at the time such action is commenced. If he bring it for part only, the judgment in the suit, whether in his favor or against him, shall forever preclude him from recovering the residue.

SECURITY FOR COSTS.

When security for costs may be required.

87. If a person who intends to bring an action before a justice is not a resident of the township, or for other reasons the justice deems it proper to do so, he may require security for costs before issuing the summons. And when the plaintiff, after the suit is begun, removes from the county, the justice may also require security as well for the costs already accrued as for those that may accrue thereafter. If the plaintiff, being notified of such requirement, fail to comply therewith, the justice may dismiss the suit and give judgment against him for costs.

How given.

88. Security for costs may be given either by depositing with the justice such sum as the latter shall deem sufficient, or by signing, with one or more sufficient sureties, an undertaking to pay to the justice the costs when demanded.

Judgment on undertaking for costs.

89. When such undertaking has been given, the justice, on notice or summons, served on the persons who signed the same or any of them, may render judgment against the person or persons so served, for the costs remaining unpaid, together with the costs of the proceeding against such person or persons, and such judgment may be in his own name, and may be enforced in the same manner as other judgments.

STATEMENT OF THE CAUSE OF ACTION OR DEFENSE.

Bill of particulars of plaintiff or defendant.

90. In every action before a justice, the plaintiff, at or before the time the summons is to be returned, shall file with the justice a statement of the grounds of his action, or a bill of particulars of his claim; and the defendant, before the trial, shall file in like manner a statement of the grounds of his defense, or a bill of particulars of the credits set-offs or counter claims on which he intends to rely.

What it must show.

91. The statement or bill of particulars must show in a plain and direct manner the facts constituting the cause of action or defense, so as to enable a person of common understanding and information to know what is intended.

Suits on accounts and written instruments.

92. In an action or set-off on an account, or on an instrument under seal or without seal, for the payment of money only, it shall be sufficient to file the same, with a memorandum stating a specified sum to be due thereon.

On bond with condition.

93. If either party claim on a bond or instrument with condition, it shall be sufficient to file the bond or a certified copy thereof, and a brief memorandum showing the particulars in which it is alleged to be broken, and the amount of damages claimed for such breaches of the condition.

Variance between bill and proof.

94. The evidence at the trial shall be confined to the matters set forth as aforesaid; but any variance between the proof and the bill of

particulars or statement of either party, shall be disregarded as immaterial, unless the justice believes the adverse party has been misled thereby to his prejudice.

Amending bill of particulars.

95. The statement or bill of particulars of either party may be amended, or an omission therein supplied, at any time before trial, or during trial, at the discretion of the justice, if he believe substantial justice will be promoted thereby. He may require as a condition the payment of costs to the adverse party; and if it appear that a continuance ought to be granted to the adverse party in consequence thereof, it shall be so granted.

Written instrument sued on must be filed.

Endorsement on same.

The justice may retain it.

96. If the action of the plaintiff, or the credit or set-off of the defendant, be founded on any bond, promissory note, bill of exchange or other instrument of writing, it shall be filed with the justice; and when judgment is rendered he shall endorse thereon the title of the suit and the amount allowed in the judgment to the plaintiff or defendant on account of the same. If the instrument be payable in instalments, he shall also specify in the endorsement for which of the instalments such allowance was made. And no suit or suits shall thereafter be instituted between the same parties, or those claiming under them, for the matter so adjudged and decided. The justice shall retain the instrument and file it with the papers relating to the suit, unless an appeal be taken from the judgment, in which case the same shall be transmitted to the clerk of the court to which the suit is transferred by the appeal; or unless he grant leave to the person entitled thereto to withdraw such instrument, on filing a copy, for the purpose of recovering another instalment or bringing suit thereon against a different party.

SET-OFF.

What claims may be set-off.

97. If the plaintiff's demand in the action be founded on judgment or contract, express or implied, the defendant, in the following cases, may set off demands which he has against the plaintiff: *First,* The demand to be set off must be founded on judgment, or contract express or implied. *Second,* If it be founded on a bond, or other contract, sealed or without seal, having a penalty, the sum equitably due by virtue of its condition, and not the penalty, shall be set off. *Third,* It must have belonged to the defendant at the time the plaintiff's suit was commenced. *Fourth,* If the plaintiff's demand be against several defendants, the set-off must have belonged to all the said defendants jointly at the time the suit was commenced. *Fifth,* If there be several plaintiffs suing jointly, the set-off must be a just demand against them all. *Sixth,* If the plaintiff be merely a trustee for another, or if the suit be in the name of a plaintiff who has no real interest in the claim sought to be thereby enforced, the set-off must be a just claim against those whom the plaintiff represents and for whose benefit the suit was brought. A claim against the nominal plaintiff shall not in such case be allowed as a set-off. *Seventh,* In suits brought by executors or administrators for any cause of action existing at the time of the death of the person they represent, whether then due and payable or not, the set-off must be a just claim against the deceased, or against his estate in the hands of the said representatives. But if

such suit be founded on any transaction or contract subsequent to the death of the testator or intestate, claims against him which existed in his life-time shall not be set off without the assent of his executors or administrators. *Eighth,* The claim to be set off must have been due and payable at the commencement of the action.

Statement of set-off.

98. To entitle the defendant to a set-off, he must file a statement or bill of particulars thereof, specifying the nature of his claim with reasonable certainty; but such statement or bill may be amended as hereinbefore provided.

Judgment if set-off be proved.

99. If the amount of the set-off be equal to the plaintiff's debt, judgment shall be entered for the defendant, with costs. If it be less, the plaintiff shall have judgment for the residue only, with costs. If it be more, and the balance found due to the defendant from the plaintiff do not exceed one hundred dollars, exclusive of interest and costs, or the defendant release the excess, judgment shall be rendered for the proper amount, with costs, in favor of the defendant, and execution be awarded thereon as if the judgment had been obtained in a suit brought by the defendant.

When set-off exceeds plaintiff's claim more than $100.

100. If the balance found due the defendant exceed the amount to which the jurisdiction of the justice is limited, and the defendant do not release the excess, judgment shall be rendered for the defendant for costs; and the defendant may thereafter recover the balance due him in any court having jurisdiction.

Defendant must file his whole claim.

101. If the defendant, at the time the plaintiff's action is commenced, has any credit, set-off or counter-claim to allege in defence or reduction of the plaintiff's demand, and be personally served with process in the suit, he shall produce the same, with his evidence in support thereof, in the cause; or be forever precluded from maintaining any action for the recovery thereof.

Exceptions.

102. The preceding section shall not however apply to the following cases: *First,* When the set-off shall exceed the plaintiff's demand more than one hundred dollars exclusive of interest; in which case the person to whom it is owing may, at his option, sue for the whole amount in any court having jurisdiction, or set off so much as will cover the plaintiff's demand and sue for the excess. *Second,* When the set-off consists of a judgment rendered before the commencement of the suit in which the same might be set off. *Third,* Claims in suit before any other court or justice at the time of the commencement of the action.

Plaintiff cannot dismiss, if set-off be filed.

103. In all cases in which a defendant has filed a set-off, he may proceeed to trial though the plaintiff fail to appear or discontinue or withdraw his action.

CONTINUANCES.

Defendant to have seven days after return day.

104. On the day the summons is returnable, the defendant, upon making oath that he has a just defence to the suit, or is justly entitled to credits or set-offs not mentioned in the plaintiff's statement or bill of particulars, may demand of right a continuance of the cause for not more than seven days.

Continuance by the justice.

105. On the said return day, if the defendant be not in custody, the justice may, without the consent of either party, continue the cause for not over seven days; but he shall not exercise this privilege at any other time, unless in case of sickness or strong necessity. If the defendant be in custody, the cause shall not be continued for more than forty-eight hours without his consent.

Defendant in custody.

Cause for continuance.

106. When the defendant is not in custody, the justice, on the return day, or any subsequent time appointed for the hearing, may continue the cause, on application of either party without the consent of the other, on the applicant showing by his own oath, or otherwise, that he cannot safely proceed to trial for want of some material paper, evidence or witness, and that he has used reasonable diligence to procure the same, and will probably be able to do so, if time be granted. The continuance shall, in such case, be for a reasonable time to enable the applicant to obtain the paper, evidence or witness referred to.

Time limited.

107. But unless both parties consent, no continuance shall be granted to a time beyond three months after the return of the summons served.

Defendant must state his defence.

108. No continuance shall be allowed a defendant without the consent of the plaintiff, except as directed in the one hundred and fourth section, until he shall have filed a bill of particulars of the credits, set-offs or counter claims, if any, on which he intends to rely, or stated the grounds of his defence, as far as may be in his power, to the satisfaction of the justice.

Costs of continuance.

109. Every continuance on the application of a party shall be at his costs; unless when one party has subpœnæd his adversary to testify as a witness and he fails to attend or refuses to testify. If the cause is continued on account of such failure or refusal, the party subpœnæd shall pay the costs occasioned thereby, unless good cause be shown, to the satisfaction of the justice, for such failure.

Trial—when to take place.

110. If the cause be not continued, the trial shall take place on the return day of the summons, if the same has been served; or at the time set for trial when the last previous continuance was made.

Absence of justice.

111. No suit shall be discontinued on account of the absence of the justice. If he fail to attend on the return day of the summons, or at the time to which the suit stands continued, any other justice of the same county may attend and continue the case for not exceeding thirty days; and if he do so, shall make and sign an entry thereof on the docket of the absent justice. If not continued by another justice as aforesaid, it shall stand adjourned for one week, and so on from week to week till disposed of.

APPEARANCE—DEFAULT OF THE PARTIES.

One hour allowed the parties.

112. The parties are entitled to one hour in which to appear, after the time for appearance mentioned in the summons or order of continuance. Neither shall be bound to wait for the other longer than that time; and at the end of the hour, or sooner, if both parties be in

attendance, the justice shall proceed in the cause, unless at the time engaged in the trial of another suit.

113. Judgment shall be rendered against the plaintiff, dismissing the action with costs, without prejudice to a new suit for the same cause, in the following cases:—*First,* If he fail to appear to prosecute his suit within one hour after the time for appearance mentioned in the summons or the order of continuance. *Second,* If he discontinue or withdraw his action; or, *Third,* If it appear that the action is brought in the wrong township, or that the justice for any other reason has not jurisdiction. And the cause of such dismissal shall be entered in the justice's docket.

When suit to be dismissed.

114. The judgment against the plaintiff for failure to appear may be set aside by the justice within seven days after it is rendered, on such conditions as he may see fit to impose; but the defendant must have notice of the motion to set aside such judgment and an opportunity to be heard in opposition thereto.

Setting aside dismissal.

115. When a defendant does not appear and answer, the plaintiff cannot recover without proving his case. The justice, if the process has been served on the defendant, shall, in such case, proceed to hear the allegations and evidence of the plaintiff and render judgment as the right shall appear.

Plaintiff must prove his case, tho' defendant fail to appear.

116. When the summons is issued against two or more defendants, but is not served upon all of them, and those not served do not appear and answer, the plaintiff, at his option, may have a new summons against those not previously served, and the justice in such case shall continue the cause for the return thereof; or the plaintiff may dismiss his suit as to the defendants not served and proceed against the others.

Part of defendants not served.

117. When the defendant does not appear and judgment is rendered against him in his absence, the justice may set aside the judgment within ten days thereafter, on motion of the defendant and payment of costs. But of such motion, reasonable notice must be given to the plaintiff; and the judgment shall not be set aside, unless the defendant makes oath that he has a lawful defence to the action, or is entitled to some credit, set-off or counter-claim which has not been allowed him; and shows by his own oath, or otherwise, reasonable cause why he did not appear. When the judgment is so set aside, the justice shall set a day for the trial, of which the plaintiff, if not present, must have at least three days notice. If judgment be entered a second time against the defendant in his absence, it shall not be again set aside.

Setting aside judgm'nt against defendant.

TRIAL—THE JURY.

118. At the time appointed for the hearing, if a jury be not demanded by either party, the justice shall hear the proofs and give judgment as the law and the evidence shall require.

Trial by the justice.

119. Either party to a civil suit before a justice, when the value in controversy or the damages claimed exceed twenty dollars, shall be entitled, under the regulations herein prescribed, to a trial by six jurors, if demanded.

Right to demand a jury.

When demand must be made.

120. The demand must be made before the justice has commenced an investigation of the merits of the case, by the examination of any witness or the hearing of other evidence; and the party who makes the demand must first file his statement or bill of particulars showing the grounds of his action or defense, if he has not already done so.

Statement must first be filed.

And costs of jury deposited.

121. The party demanding the jury must deposit with the justice a sum of money sufficient, in the opinion of the justice, to cover the costs of such jury.

Time for return of jury.

122. When a jury is to be called, the cause shall be continued until a time fixed for the return of the jury. If neither party show good cause for a later day, the jury shall be returned on the same day or within the next two days.

Jurors—how selected.

123. The names of at least eighteen persons, designated by the justice, shall be by him, or under his direction and inspection, written on separate pieces of paper or ballots of the same size and appearance, which shall be folded or rolled so that the names cannot be seen, and that, as far as possible, one cannot be distinguished from another. The ballots so folded or rolled shall be put into a box and be well shaken or mixed together. The justice shall then, in the presence of the parties, their agents or attorneys, draw out one of the ballots, and if no just exception be shown by either party, shall enter the name written on such ballot on the list of jurors to be summoned; and so shall proceed till the number of names on the list amounts to six.

Exception to juror.

Qualifications.

124. The persons whose names are put into the box, as aforesaid, must be voters of the township, not exempt from serving on juries in the circuit court, and not of kin to the plaintiff or defendant, or interested in the suit.

Venire or summons.

125. The justice shall then issue a *venire* or summons, directed to a constable of the township or any person deputed by the justice to serve the same, commanding him to summon the six persons so selected to appear at the time and place therein stated, to serve as a jury in the trial of the action between the plaintiff and defendant.

How served and returned.

126. The officer shall serve such *venire* by personal service on the jurors therein named, and return the same, endorsed by him with the names of the persons so summoned, at the time and place appointed for the trial.

Delinquent jurors.

127. Any person so summoned who fails to appear, without a sufficient excuse, or when in attendance refuses to serve on the jury, shall be liable to the like penalty, and may be proceeded against in the same manner as a person who neglects or refuses to attend before a justice when subpœnaed to testify.

Filling vacancy in jury.

128. If a sufficient number of competent jurors be not obtained as aforesaid, the justice, in order to supply the deficiency, may direct the constable or person deputed, to summon any of the by-standers or other persons to serve as jurors.

Exceptions to jurors.

129. Before the jury are sworn, either party may allege any lawful exception to any one or more of them, unless the same exception was

made at the drawing to the same person, and then overruled by the justice. The jurors proposed shall be subject to the same exceptions as jurors in the circuit court. The question arising on the exception shall be determined by the justice, who may examine the juror and any witness, under oath, in relation thereto. If the exception to a juror be sustained, another shall be called in his stead.

130. The jury shall be sworn by the justice, well and truly to try the matter in difference between the plaintiff and defendant, and a true verdict give according to the evidence. Oath of jurors.

131. After the jury are sworn, they shall sit together and hear the allegations and proofs of the parties, which shall be delivered publicly in their presence; and when they have heard the same, they shall be kept together in some convenient place, under charge of a constable or person deputed by the justice, until they have agreed on their verdict or are discharged by the justice. Hearing the evidence, &c.

132. When they have agreed on their verdict, they shall deliver it publicly to the justice, signed by one of their number as foreman; and the justice shall enter the same at full length on his docket. Verdict.

133. Whenever the justice is satisfied the jury cannot agree, he may discharge them and issue a new *venire* returnable within forty-eight hours, unless the parties agree on a longer time, or agree that the justice may himself render judgment on the evidence already heard before him; which, in such case, he may proceed to do. Proceeding when jury disagree.

134. On the verdict being delivered to the justice, each juror shall be entitled to receive from him fifty cents out of the money deposited in his hands by the party who demanded the jury. When the jury are unable to agree, the same compensation shall be paid them out of the said money. If the final judgment in the action be in favor of the party who demanded the jury, the amount so paid shall be included in the costs awarded against the adverse party, unless it be manifest to the justice that a jury was demanded with a view to increase the costs, and not for any just and proper purpose. Fees of jurors.

135. If the justice believe the verdict to have been procured by fraud or undue means, or to be the result of partiality or prejudice, or to be manifestly contrary to the law or the evidence, he may, at any time within seven days thereafter, on the motion of either party, set it aside. In such case he shall appoint a time for a new trial, and issue a *venire* for another jury. The adverse party must, however, have reasonable notice of such motion, unless the same is made on the day when the verdict is rendered, and in his presence. Setting verdict aside.

ARBITRATORS.

136. At any time before judgment the plaintiff and defendant may, by mutual agreement, have the cause submitted to the arbitrament of three disinterested men chosen by themselves; and if the arbitrators be present, they shall hear and determine the matters in difference between the parties, being first sworn by the justice impartially to decide the same according to the law and the evidence. But if they be Parties may submit suit to arbitrators. Oath.

Time and place of meeting. not present, a time and place shall be appointed by the justice for the trial, unless the parties agree upon the same; and the justice shall issue a summons to the arbitrators to attend, which summons may be served by the constable, or by the parties, as they may agree. The fees of arbitrators shall be the same as those of jurors.

Summons to arbitrators.

Fees.

Award and judgment. 137. When the arbitrators attend, being first sworn as aforesaid, they shall hear and determine the cause, and make out their award in writing, (which shall be valid when signed by any two of them,) and return the same to the justice, who shall enter a note thereof on his docket, and render judgment thereon, and issue execution as in other cases.

Effect of award. 138. Every judgment on such award shall conclude the rights of the parties, unless, within ten days from the rendition of such judgment, it be made to appear to the satisfaction of the justice, or afterwards to the court on appeal, that the award was obtained by fraud, corruption or other undue means. In such case the award and judgment may be set aside by the justice or court, and the cause be tried as if the arbitration had not been agreed upon.

When may be set aside.

Appeal. 139. No appeal shall be granted to the circuit court from a judgment of a justice rendered on an award as aforesaid, unless the party praying such appeal, and otherwise entitled to it, makes oath that he verily believes such award to have been obtained by fraud, corruption or other undue means.

Arbitration set aside if award not made in two weeks. 140. If, after the arbitration has been agreed upon as aforesaid, the award be not returned to the justice within fourteen days, the justice, on the application of either party, the other having reasonable notice, may in his discretion set aside the agreement, and thereafter proceed to trial and judgment as in other cases.

WITNESSES—EVIDENCE.

Subpœna for witnesses. 141. A justice may issue subpœnas to compel the attendance of witnesses to give evidence in any action pending before him; and such subpœna may be served anywhere within the county.

How served. 142. A subpœna may be served by a constable, or any other person; and shall be served by reading the same, or stating the contents thereof to the witness, or by leaving a copy thereof at his usual place of abode.

Witness in adjoining county. 143. Whenever either party, in an action pending before a justice, makes oath that the testimony of a witness residing in any county adjoining that in which the suit is pending, is material and necessary to him in the trial of the cause, stating in such affidavit the facts he expects to prove by such witness, the justice shall continue the cause at the costs of such party for a period not exceeding two weeks, and forthwith issue a subpœna for such witness, which subpœna may be addressed to any constable of the township in which the witness resides, or be served by any other person as in other cases.

Witness's right to demand his fees. 144. A witness in a civil suit is entitled, at the time the subpœna is served, to demand payment of his legal fees for traveling to and from the place of trial and one day's attendance. If he demand them and if they are not paid, he is not obliged to attend the trial before the justice.

145. A person attending as a witness, under a subpœna, shall be allowed fifty cents for each day's attendance, and five cents for each mile necessarily traveled to the place of attendance, and the same for returning.

Fees.

146. If a witness attend on subpœna and be not examined by either party, the costs of such witness shall be paid by the party ordering the subpœna, unless the adverse party, by confessing the matter or otherwise, render such examination unnecessary.

Costs of witness—by whom paid.

147. Any party calling more than two witnesses to any fact which is not contradicted by another witness, shall pay the costs of such additional witnesses.

148. No claim for attendance shall be allowed a witness unless made before judgment is entered.

Witness must claim his fees before judgment.

149. Whenever it shall appear to the satisfaction of a justice that any person has been duly served with a subpœna to give evidence before him in any matter in which he has authority to require such witness to appear and testify; that his evidence is material; and that he neglects or refuses to attend as required by such subpoena, the justice may issue an order of arrest against such person, if found within the county, unless it appear that under the provisions of the one hundred and forty-fourth section he was not bound to attend.

Delinquent witness.

Arrest.

150. When a person so arrested is brought before the justice, and no sufficient excuse is shown for his neglect or refusal to obey the subpœna, or when a person in attendance refuses to testify, the justice may impose a fine on him, not exceeding five dollars and the costs of the arrest and proceeding. An entry of such fine, stating the reason therefor, must be made by the justice in his docket, and shall have the effect of a judgment in favor of the state of West Virginia, and may be enforced as other judgments of justices.

Fine.

151. When the witness was subpœnaed to attend a trial out of the county where he resides, the order of arrest must be issued and the fine be imposed by the justice of the township in which such witness resides or was served with the subpœna, on proper evidence of the default.

Witness from another county.

152. Every person subpœnaed as aforesaid and neglecting or refusing to appear and testify without sufficient excuse, and every person present at the trial and refusing to testify shall also be liable to the party requiring his evidence, for all damages such party may sustain thereby.

Delinquent witness liable for damages.

153. Either party to a civil suit before a justice may require the adverse party, or the person for whose benefit such suit is being prosecuted or defended in opposition to himself, to testify as a witness at the trial, or by deposition, in like manner and subject to the same rules as other witnesses; or such adverse party or person may be required to

Right of one party to require the other to testify.

Interrogatories. answer interrogatories in writing pertinent to the matter in difference, approved and allowed by the justice. Such answers may be read in evidence in the suit by either party. No such testimony shall be used in any other suit or proceeding, civil or criminal, for or against the party or person so testifying or answering.

Effect of his refusal. 154. When the person so required to testify or answer interrogatories, fails or refuses so to do, having been subpœnaed for the purpose, or notified of the requirement, he may be arrested and fined as a delinquent witness; and if he be plaintiff in the action, or the suit be prosecuted for his benefit, the justice may in his discretion, dismiss the same and give judgment against him for costs; or, if he be defendant, may proceed as if the plaintiff's demand was confessed.

Notice of deposition. Right to cross examine. 155. No affidavit or deposition of any person shall be given in evidence on the trial on behalf of either party, if the other object, unless the party against whom it is offered had reasonable notice of the taking thereof, or attended and was allowed freely to cross examine the affiant or witness subject to the rules of law.

Objection to competency. 156. If a witness offered at the trial be objected to as incompetent, the objection shall be tried and determined by the justice. The proposed witness may be examined on oath touching the question of his competency, and other evidence may be given in support of or against the objection.

Who are incompetent to testify. 157. The following persons are incompetent to testify: *First,* A person interested in the result of the suit which is being tried, unless such interest be released or discharged, or he be proposed as a witness by the party against whom he is interested, or such party do not object to his examination. *Second,* Persons of unsound mind; and children who appear incapable of receiving just impressions of their obligation to tell the truth or of the facts respecting which they are to be examined. *Third,* Husband and wife, either for against each other; or concerning any communication made by one to the other during the marriage, whether called to testify while the relation subsists, or after it is dissolved. *Fourth,* An attorney without his client's consent, concerning any communication made to him by his client touching the matter in which he is consulted or employed, or any counsel or advice given by him to his client. *Fifth,* A minister, clergyman or priest of any religious denomination concerning any confession made to him according to the course of discipline enjoined by the church to which he belongs.

When party may testify in his own behalf. See sect. 161. 158. A party to the suit, or person having an interest in the result thereof, may be a witness to prove the loss of any paper which may come in question at the trial, in order to allow the introduction of secondary evidence of its contents; or to prove the death or absence from the country of a subscribing witness in order to allow the introduction of other evidence of the execution of any instrument.

Proof of signature. 159. The execution of any written instrument or of any assignment or endorsement thereof, produced at the trial, need not be proved, unless the adverse party makes oath that he does not believe the same to be genuine.

160. Depositions of witnesses residing out of the county, or sick or otherwise unable to attend, or about to leave the county, may be taken by either party on reasonable notice to the other, to be used in trials before a justice; and no commission shall be necessary. Depositions to be used before justices.

161. Such deposition shall be sent under seal to the justice before whom the case is to be tried, the officer taking the same writing his name across the place where it is sealed. And if the witnesses at the time of the trial be absent from the county, or sick or otherwise unable to attend, which facts may be shown by the oath of a party to the suit, or otherwise, the deposition, if competent and proper evidence, may be read in evidence at the trial by either party.

162. Every witness, before giving his testimony, shall be sworn that the evidence he will give relating to the matter in difference between the plaintiff and defendant, shall be the truth, the whole truth and nothing but the truth. A solemn affirmation shall, in all cases, have the same effect as an oath; and the rules of evidence in trials and proceedings before justices shall, unless otherwise provided, be the same as in the circuit courts. Oath of witness. Affirmation. Rules of evidence

JUDGMENT.

163. When a suit is dismissed or withdrawn, judgment confessed, or the defendant is in custody, or has property under attachment, judgment shall be entered immediately. In other cases, judgment may be entered at any time within one week after the trial. When judgment to be entered.

164. The defendant may, either before suit is brought, or at any time afterwards before trial, make an offer in writing to confess judgment in favor of the plaintiff for the sum or property specified in such offer. If the plaintiff fail to accept the said offer before trial, or to give notice to the defendant of such acceptance, and do not recover a more favorable judgment, the justice, on proof of such offer being made, shall adjudge the plaintiff to pay all costs of the action from the time of the offer. If the offer so made be not accepted, it shall not be given in evidence against the defendant. Offer to confess judgment.

165. When judgment is rendered in a case in which the defendant is subject to arrest and imprisonment, it must be so stated in the judgment and entered on the docket. Judgment authorizing arrest.

166. In any case not otherwise herein provided, the justice, on motion of either party, reasonable notice thereof being given to the other, may, on such terms and conditions as he shall see fit to impose, set aside his judgment within seven days after it is entered, and award a new trial, if satisfied that injustice has been done by the judgment to the party by whom the motion is made. Justice may set aside judgment.

STAY OF EXECUTION.

167. The party against whom a judgment is rendered by a justice may, within ten days thereafter, obtain stay of execution thereon, in any case in which such stay is not prohibited by law, by filing with the justice an undertaking, signed by one or more sufficient sureties, to the effect that the amount of such judgment, including interest and How stay obtained.

costs, shall be paid on the expiration of the stay. The justice shall note the undertaking on his docket, stating the names of the sureties, and the time of stay allowed. Upon such undertaking being filed within ten days, if execution has been previously issued, it shall be recalled by the justice.

Judgment against debtor and surety, if debt not paid.

168. If the judgment with interest and costs be not paid when the stay expires, the undertaking shall have the effect of a judgment confessed, and execution shall issue jointly against the judgment debtor and sureties who signed the undertaking. It shall be the duty of the justice to issue such execution, within three days after the stay expires, unless otherwise ordered by the party who is entitled to receive the money to be collected thereon.

Time of stay allowed.

169. When the judgment, exclusive of interest and costs, does not exceed ten dollars, such stay shall be for one month, if over ten and not over twenty dollars, for two months; if over twenty and not over fifty dollars, for three months; and if over fifty dollars, for four months.

In what cases no stay allowed.

170. No stay of execution shall be allowed in the following cases: *First,* On any judgment upon an undertaking filed to obtain such stay; *Second,* On the judgment rendered on any other undertaking filed with a justice or given to a constable, pursuant to this act; *Third,* On any judgment against a justice or constable, for refusing or neglecting to pay as the law requires, money collected or received by such justice or constable in his official capacity; or against a constable for failing to make return, or making a false return of any process or order.

Judgment remains in force for benefit of security.

171. If any surety, who signed the undertaking given to obtain stay of execution, pay the judgment before or after the stay expires, the judgment against the principal shall remain in force for his use; and execution thereon may be issued by the justice on the application of such surety, after the expiration of the stay, with an endorsement on such execution showing for whom it is to be collected.

Security insufficient.

172. If the justice at any time before the stay expires become satisfied that the security taken on granting such stay is insufficient, he shall give notice to the judgment debtor, requiring additional security; and if it be not given within three days after service of the notice, he shall make entry of the facts on his docket, and forthwith issue execution on the judgment. But if additional security, to the satisfaction of the justice, be given within two weeks after the service of the notice, the execution, if issued in the meantime shall be recalled, and the stay originally granted remain in force.

EXECUTION.

Who may issue execution.

173. Subject to the provisions of law in relation to cases in which stay of execution is granted, or the judgment is removed on appeal or error to the circuit court, executions for the enforcement of the judgment of a justice in a civil action, may be issued by the justice by whom such judgment was rendered, or his successor in office, or the justice with whom the docket on which such judgment is entered is

When,

lawfully deposited, at any time within five years from the entry of the judgment, or the date of the last execution issued thereon.

Duty of justice to issue after ten days.

174. If stay of execution be not granted within ten days after the judgment is rendered, or the cause be not removed on appeal or error to the circuit court within that time, it shall be the duty of the justice, on the expiration of the said ten days, to issue execution unless otherwise directed by the person entitled to receive the money collected thereon; and on the application of such person, the justice, in his discretion, may issue execution before the ten days expire.

May do so before.

Justice to receive all money paid.

175. Justices shall receive all money collected on execution or other process by them issued, and all money tendered to them on any judgment on their dockets, or any dockets lawfully in their possession, and pay the same on proper demand to the person entitled thereto. And for failure so to pay the same, he, and the sureties on his official bond shall be, jointly and severally, liable for such money to the person entitled thereto, with interest from the time of such demand, and ten per cent. on the principal, in addition, as damages.

Liability if he do not pay over.

Requisites of the execution.

176. The execution must be signed by the justice who issues it, and be directed to any constable of the county, or to the person deputed to execute it. It must intelligibly refer to the judgment by stating the names of the parties, the name of the justice by whom, the county and township in which, and the time when, it was rendered. It must direct the officer to collect the amount of the judgment out of the personal property of the debtor, and pay the money made to the justice, and return the execution with a certificate thereon, showing the manner in which he has executed the same, within sixty days from the time of his receipt thereof. It must state the principal sum for which the judgment was rendered, or the sum by which it may be discharged, the time the interest, if any be allowed, is to commence, and the costs to be collected; and if there be credits, they shall be stated thereon. But matter of form shall be disregarded, if the execution be substantially correct, and if there be errors and omissions therein, the same may be corrected or supplied by the justice at any time according to the truth.

Blanks in process.

177. The summons, execution and all orders and process issued by a justice, except subpœnas, must be filled up without a blank that might be filled by another; otherwise they shall be void.

New executions.

178. If an execution be returned unsatisfied, or no return be made thereof, new executions may successively be issued after the return day of the former, to be endorsed respectively "second execution," "third execution," and so forth, as the case may be.

Principal and surety.

179. When a joint judgment is rendered against a principal debtor and his surety, if such suretyship appear by any evidence at the trial or paper filed in the cause, or by admission of the parties, to the satisfaction of the justice, he shall note the fact on his docket, and in such case, a memorandum thereof shall be endorsed on the execution, and the personal property of the principal debtor subject to execution within the jurisdiction, shall be first sold, unless the surety direct otherwise.

Officer to endorse time he receives it.

180. The constable, or person deputed to execute the same, shall endorse on the execution the day and the hour when it came to his hands; and from that time it shall operate as a lien on the personal property of the judgment debtor liable to be seized under it; which lien however shall be divested in favor of any process in the hands of another officer, under which the property shall be first levied upon or attached. When there are several executions in the hands of the same officer against the same judgment debtor, they shall be executed in the order in which they were received; or if received together, all shall share alike, without preference to one over another.

Lien of execution.

When same officer has several executions.

Levy.

181. The officer, after taking into his custody the personal property levied on by virtue of the execution, shall endorse on the execution the property levied on and the time of levying the same, and immediately give public notice, by advertisement signed by himself, and posted at three public places within the township in which such property was taken, of the time and place, within such township, where it will be exposed to sale. Such notice shall describe the property to be sold or contain a list therof, and be posted as aforesaid at least ten days before the time of sale appointed. But when the property is of a perishable nature or expensive to keep, the justice may order the same to be sold at public auction at such time and place as he may direct.

Advertisement.

Time of sale.

Perishable property.

Sale—how and where.

182. All sales on execution by virtue of this act shall be at public auction in the township in which the property was levied on, between the hours of ten in the forenoon and four in the afternoon of the day appointed for the sale, and at the house or on the premises where the property was taken, or at one of the most public places in the township.

Hours.

Justice and constable not to buy.

183. Neither the justice who issued, nor the officer holding the execution, shall purchase, directly or indirectly, any property sold on such execution. If either of them do so, he shall be fined not less than five nor more than one hundred dollars.

Expenses.

184. The officer shall be allowed by the justice the reasonable expenses of executing the process and keeping the property, out of the proceeds of sale, to be taxed and collected as other costs in the suit.

Return of execution.

185. The officer shall return the execution according to the command thereof, and pay the money made thereon to the justice, returning the excess, if any, to the person against whom the execution was issued. When any property is sold by him, he shall annex to his return a true inventory of each article sold, and the price at which it was sold. If the execution be not satisfied and any property remain in his hands unsold for want of bidders, he shall annex a true inventory of every article thereof to his return. If he fail herein, he shall be fined not less than five nor more than fifty dollars, and with the sureties on his official bond be jointly and severally liable to an action on the said bond in the name of the State for the benefit of the person injured thereby.

Property unsold—order to sell.

186. When an execution is returned unsatisfied in whole or in part, and there is property in the hands of the officer remaining unsold for

want of bidders, or other cause, it shall be the duty of the justice, unless otherwise directed by the person entitled to receive the money remaining uncollected, forthwith to issue his order commanding any constable of the county to whom such order is directed to sell the said property and pay over the proceeds thereof to the said justice; which sale shall be subject to the same regulations as sales on execution.

Security that property will be forthcoming.

187. Any constable or officer having levied on property of which he permits the party against whom the execution issued, or any other person, to retain or have possession, may take such security, for his own indemnity, as he shall require, that such property shall be delivered at the time and place appointed for the sale thereof.

When property levied on is claimed by another.

Security given by claimant.

188. When a constable or person deputed to execute the same, by virtue of an execution or order of attachment, has levied on or attached property claimed by any person other than the party against whom the execution or order issued, if such claimant or another for him, with one or more sufficient sureties, sign and file with the justice by whom the execution or order was issued, an undertaking to the effect that such claimant, in any suit that may be brought on such undertaking within three months after the date thereof, will prove that he was the owner of the said property at the time of such seizure, or if he fail to do so, will pay the value thereof, the justice shall issue his order, directed to the officer having such execution or attachment, commanding him to deliver up the property to the said claimant; and such officer shall obey the same. The money, if any, which may be recovered on such undertaking shall be applied as the proceeds of such property would have been, if it had not been released as aforesaid.

Trial of claimant's right.

189. Or, the claimant in such case, without giving the undertaking mentioned in the preceding section, may apply to any justice of the township in which the levy or attachment was made, for an order to a constable, directing him to notify both the creditor and debtor to appear and show cause why the property should not be discharged from the levy or attachment. Such order shall be returnable in five days or less from the date thereof, and shall be served and returned by the constable according to the command thereof; but whether it be returned served or not, the justice on the return day thereof, or at such reasonable time thereafter as he may appoint for the purpose, shall hear the parties or such of them as attend, and dismiss the claim or order the officer to restore the property to the claimant, as the right shall appear; and the party prevailing shall recover his costs. The justice may also make any order necessary to prevent the property being sold before the right thereto is determined as aforesaid.

Appeal in such case.

190. Any party considering himself aggrieved by the decision of the justice under the preceding section, may appeal therefrom to the circuit court in like manner as from a judgment.

ARREST AND COMMITMENT AFTER JUDGMENT.

Commitment of defendant previously arrested.

191. When the judgment in a civil action before a justice is rendered against a defendant who is in custody under an order of arrest issued as hereinbefore provided, the justice, if, upon the whole evidence

produced in the cause, including the affidavit on which the said order of arrest was founded, he believe such defendant to have been guilty of the fraud alleged in such affidavit, may make and sign an order directed to the officer having the defendant in custody, commanding such officer to deliver his prisoner to the sheriff of the county to be committed to jail and there detained until lawfully discharged.

Arrest and commitment after judgment.

192. If, at any time after judgment against the defendant, there is filed in the office of the justice who is authorized to issue execution on such judgment, the affidavit or affidavits of one or more credible persons, made before any person authorized to administer oaths, stating the amount remaining unpaid on such judgment, and charging the defendant with fraud in any of the particulars mentioned in the forty-ninth section of this act, the justice shall, in such case, issue an order for the arrest and commitment of the defendant, on motion of the plaintiff.

Requisites of the order.

193. The said order may be issued to accompany the execution, or while an execution is outstanding if sufficient property has not been levied on to satisfy the same. It shall be dated the day it is issued, be signed by the justice, delivered to the officer holding the execution, if any be outstanding, and be returnable whenever executed; or if not executed, then within sixty days after its date. It shall state the names of the parties, the judgment and costs, with the credits, if any, thereon; and command the officer to arrest the defendant, and, unless he pay the amount due or surrender property sufficient to satisfy the same, to deliver him to the sheriff of the county to be committed to jail and there detained until lawfully discharged.

Undertaking to be filed by plaintiff.

194. But the order referred to in the last two sections shall not be issued until the plaintiff, or some one for him, with one or more sufficient sureties, shall sign and file with the justice an undertaking to pay the defendant all damages he may sustain by reason of the arrest and commitment, should it thereafter appear that the order was wrongfully obtained.

Defendant has same remedy.

195. If the defendant recover judgment against the plaintiff, he shall have the like remedy against the plaintiff by arrest and commitment.

Deliver to sheriff or jailor.

Copy of order.

196. The officer, pursuant to the order mentioned in the one hundred and ninety-first and one hundred and ninety-third sections, shall deliver the prisoner to the sheriff or jailor of the county, with a certified copy of the said order, which copy shall be sufficient authority to the said sheriff or jailor to receive and keep the prisoner in jail until discha[illegible]ccording to law.

Term of imprisonment.

197. The [illegible] committed as aforesaid, may be kept in prison for ten days, and one day in addition for every two dollars over twenty due on the said judgment, unless he sooner pay the same.

Failure to arrest —escape.

198. The officer may at his peril omit to arrest any person under such order, or after arrest permit him to go at large, subject only to his liability for omitting to arrest or for an escape, if he fail to have the money forthcoming on the return of the order.

When sheriff, &c., may discharge the prisoner.

199. The sheriff or jailor receiving any person as aforesaid, or keeping him in jail, may at any time, on notice to the party at whose suit such person is held, discharge the prisoner, unless their fees are paid and money furnished to pay the sustenance of such prisoner; or they may detain him, holding the said party liable for such fees and sustenance.

Discharge on payment or security.

200. The person committed, as aforesaid, shall be discharged at any time upon paying the sum due on the judgment, including all costs, or surrendering property sufficient to satisfy the same, or signing with one or more sufficient sureties, and causing to be filed with the justice an undertaking that he will pay the same within sixty days from the date thereof.

APPEALS.

In what cases appeals lie from judgments of justices.

201. In all cases an appeal shall lie, under the regulations herein prescribed, from the judgment of a justice to the circuit court of the county, when the amount exceeds ten dollars, exclusive of interest and costs, or the case involves the freedom of a person, the constitutionality or validity of a law, or the right of a corporation or county to levy tolls or taxes.

Undertaking to be filed.

202. The party desiring to appeal shall, within ten days after the judgment is rendered, sign and file with the justice an undertaking, with one or more sufficient sureties, to the effect that he will prosecute his appeal without avoidable delay, and if judgment be rendered against him on such appeal, will satisfy the judgment.

One of several plaintiffs or defendants.

203. When there are two or more plaintiffs or defendants, any one or more of the plaintiffs or of the defendants may appeal, without joining therein the others on the same side.

Filing of undertaking—effect of.

204. On the filing of such undertaking, all further proceedings in the action before the justice shall cease. If any execution, order of arrest, or other process or order be outstanding, it shall be recalled by the justice, and if the appellant be in custody, he shall be discharged.

Transcript and papers to be delivered to clerk.

205. The justice shall immediately make out and certify a complete transcript from his docket of all the proceedings before him in the action, and deliver or transmit the same, together with the said undertaking, the statements and bills of particulars, the depositions and all original papers in the cause, to the clerk of the circuit court of the county, on or before the second day of the term commencing next after such appeal. If the justice omit or refuse so to do, he shall be fined not less than five nor more than one hundred dollars; and, moreover, shall, with the sureties on his official bond, be liable to the party aggrieved for any loss or damage he may sustain thereby.

When.

Clerk to docket appeal.

206. The clerk of the circuit court on receiving the said transcript and papers, shall file the same and docket the appeal. The appeal shall be tried in a summary way, without pleadings in writing; but if it be demanded by either party, and the sum in controversy, or damages claimed, exceed twenty dollars, a jury of six shall be selected

How appeal tried

and impanelled to try the questions of fact, in like manner as other juries in said court. All lawful evidence produced in relation to the matters in difference between the parties shall be heard, whether such evidence was produced before the justice or not, and the cause shall be determined without reference to the judgment of the justice, on the principles of law and equity.

Delay in prosecuting appeal.

207. If the appellant do not prosecute his appeal without avoidable delay, the judgment of the justice shall be affirmed. If the court, in any case, be of opinion that the undertaking filed by the appellant is for any cause insufficient, or the security thereto doubtful, it shall order a new undertaking in proper form, and with sufficient security, to be given within a time specified in such order, and if it be not given, the judgment of the justice shall be affirmed.

Insufficient security.

When appellant to pay costs.

208. If the judgment of the justice be affirmed as aforesaid, or if upon the trial in the court the appellant do not increase the original judgment, if it was in his favor, or reduce it if it was against him, more than five dollars, exclusive of interest and costs, the appellant shall pay the costs of the appeal.

Judgment against appellant and sureties.

209. When the judgment appealed from is against the appellant for any sum of money, and such judgment is affirmed, or an equal or greater sum is found to be due by the appellant, judgment shall be rendered by the circuit court against the appellant and his sureties for the sum due, including interest and costs up to the time the appeal was taken, with damages on the aggregate at the rate of ten per cent. per annum from that time until payment, and the costs of the appeal.

Damages.

When appellant recovers costs.

210. The appellant shall recover the costs of the appeal when the original judgment is reversed, or when a judgment of the justice in his favor is increased, or a judgment against him reduced in the circuit court, more than five dollars, exclusive of interest and costs.

Power of the court.

211. In all cases of appeal from a justice to a circuit court, the court (subject to the foregoing rules when they are applicable) may make any order during the progress of the cause which the principles of law or equity may require; and shall render judgment as the right shall appear, and proceed to enforce the same as other judgments of the court are enforced, without remanding the cause again to the justice. The judgment in the circuit court, if in favor of the appellee, shall be against the appellant and his sureties.

Judgment for appellee.

Appeals may be granted by court or judge.

212. Appeals from the judgments of justices may be granted, after the expiration of the ten days, by the circuit court in term-time, or the judge thereof in vacation, when the party seeking the appeal shall deliver to the court or judge a proper undertaking, with sufficient security thereto as hereinbefore prescribed, and shall show by his own oath, or otherwise, that he was prevented from taking such appeal within the ten days by circumstances beyond his control.

Order to be made in such case.

213. In such case, if the appeal be granted, the court or judge shall make and certify to the justice an order directing him to cease

all further proceedings in the cause, and recall all executions and orders that may be outstanding for the enforcement of the judgment, and transmit, without avoidable delay, to the clerk of the said court a complete transcript from his docket of the proceedings in the suit, together with all the original papers relating thereto. Upon the receipt thereof by the clerk, the cause shall be proceeded with in the circuit court as in other cases of appeals from the judgment of the justices.

Order of court or judge granting appeal.

DOCKET.

214. Every justice shall keep a book denominated a "docket," to be furnished by the board of supervisors at the expense of the county, and to be used exclusively for entering therein his judicial proceedings.

Docket, by whom furnished.

215. He shall enter in the said docket the title of every action commenced before him, setting forth at full length the names of the parties, if known, and showing which are plaintiffs and which are defendants, and stating the time the action was commenced, and the amount of money or damages, or the specific property, which the plaintiff demands.

Title of action.

216. Underneath the title of the action he shall enter, at the times they occur, the following particulars, commencing the transactions or proceedings of every day with their proper date:

What to be entered in docket.

First, The date of the summons, the time it is returnable, and the name of the person to whom it is delivered to be served. The same particulars must be stated in relation to any order of arrest or attachment, which may be issued in the action; and if an order of arrest or attachment be issued, it shall be stated on whose affidavit it was founded;

Second, The return made to the process should be briefly noted;

Third, The name of the agent, attorney or guardian, if any, appointed on behalf of any party, should be stated; also,

Fourth, The filing by either party of his statement or bill of particulars, with a brief notice of the contents thereof;

Fifth, Every continuance, showing at whose instance it is made, and to what time. If made to a different place, it shall be so stated;

Sixth, The undertakings filed in the action by either party should be noticed, with the names of such party and his sureties,

Seventh, The docket should show which of the parties is present at the trial;

Eighth, When a jury is demanded, by whom such demand is made;

Ninth, The time appointed for the trial by jury;

Tenth, The names of the jurors failing or refusing to appear or serve, and the fines imposed on them, if any;

Eleventh, The names of the jury sworn;

Twelfth, The names of each witness sworn, and at whose request; the proceedings against, and fines imposed on, delinquent witnesses;

Thirteenth, The proceedings against any person for an alleged contempt;

Fourteenth, The verdict of the jury shall be set forth at full length. If they cannot agree and are discharged, the fact shall be stated;

Fifteenth, The judgment of the justice shall be stated, with the items of the costs;

Sixteenth, The execution and orders to sell issued, to whom delivered to be executed, the renewals thereof, and the returns made on any such process, should be shown by the entries on the docket; also,

Seventeenth, Every sum of money received by the justice in the cause, showing when and by whom paid;

Eighteenth, The giving of a transcript from the docket, and to whom given;

Nineteenth, If an appeal be taken, by which party, the undertaking filed by him, by whom signed and when filed;

Twentieth, The undertaking filed for stay of execution, by whom signed and when filed, and the stay granted;

Twenty-first, The satisfaction of the judgment, and how and when satisfied;

Twenty-second, Any other proceedings in the action which the justice is by law directed to enter on his docket, or may think it necessary or proper to enter.

Form.

217. So far as the entries in the docket are concerned, the form shall be regarded as immaterial, if the truth be substantially stated so as to be intelligible to a person of common understanding and information.

Index of judgments.

218. Every justice shall keep an alphabetical index of all judgments entered in his docket. In such index shall be inserted the names of the parties to each judgment, with the page where the judgment is entered.

Cases to be numbered on docket.

Papers, how filed

219. He shall number the cases progressively on his docket, and shall correspondingly number the papers belonging to each case. He shall keep all the papers of each case together, in packages of convenient size, and in the order the cases are numbered on his docket.

Effect of docket or transcript as evidence.

220. Whenever it shall be necessary to prove a judgment or other process had before a justice, or any process issued by him, or the return thereof, or any order made by him in a suit, the docket in which it is entered, or a transcript thereof certified by him or his successor in office, or the person lawfully having the custody of such docket, shall be received as evidence of the same, but shall not be conclusive if errors or omissions be shown.

Docket and papers to be delivered to successor.

221. Every justice, upon the expiration of his term of office, shall deposit with his successor his official docket, as well as those of his predecessors which may be in his custody, together with all papers relating to his judicial proceedings in their proper files and order, and all statutes received by him in his official capacity, to be kept by such successor as public records and property.

Custody of docket, &c., in case of vacancy.

222. If the office of a justice become vacant by death, removal from the township or otherwise, the dockets, papers, laws and statutes in the possession of such justice by virtue of his office, shall be delivered to the other justice, if there be one, of the township; otherwise, to the clerk of the township; to remain in his custody until such vacancy

is filled, and then to be delivered to the person elected and qualified to fill such vacancy.

In case of absence.

223. Any justice absenting himself from his township for a longer period than sixty days, shall deposit the dockets, papers and books, which came to his hands by virtue of his office, with the other justice, if there be one of the same township; otherwise, with the clerk of the township. The board of supervisors of the county may, however, at their option, consider the justice so absenting himself as having thereby vacated his office, and may order an election to fill the vacancy.

Receipt to be given.

224. Any person receiving, as aforesaid, the dockets, papers, laws and statutes which were in the possession of any justice by virtue of his office, shall, if requested, give a receipt therefor to the person delivering the same.

Authority of justice with whom docket is deposited.

225. A justice with whom the docket of another is lawfully deposited during vacancy or absence, or as the successor of such other justice, is hereby authorized, while such docket remains lawfully in his custody, to issue execution or other process thereon, give and certify transcripts thereof, and do all such other acts in relation thereto as he may do in relation to his own docket. But executions and process so issued, shall be returned to the justice who may have the legal custody of the said docket on the return day thereof.

How custody of docket, &c., is decided.

226. When two justices are elected in any township in place of two others, the board of supervisors of the county shall, by resolution, declare as to each of those going out of office which of the two elected shall be deemed his successor.

CONTEMPTS.

In what cases justice may punish for contempt.

227. A justice may punish as for a contempt, persons guilty of the following acts, and no others: *First*, Disorderly, contemptuous or insolent behaviour towards the justice, while engaged in the trial of a cause, or in any judicial proceeding, if such behaviour tend to interrupt the proceedings or impair the respect due to his authority; *Second*, Any breach of the peace, boisterous conduct, or wilful disturbance tending to interrupt the judicial proceedings of a justice; *Third*, Wilful resistance in presence of the justice to the execution of any lawful order or process made or issued by him.

Proceedings.

228. An order of arrest may be issued by a justice, on which the person so guilty may be taken and brought before him, or such person may be taken in custody by any officer present, upon the oral order of the justice, and held to answer for the contempt. An opportunity must be given him to be heard in defence or explanation of his conduct; and the justice may thereupon discharge him, or adjudge him guilty of the contempt, and punish him by fine or imprisonment, or both. The fine shall not exceed ten dollars, or the imprisonment three days.

Judgment.

Enforcement of judgment.

229. The conviction, specifying the particular circumstances of the offence and the judgment thereon, must be entered by the justice in his docket. A warrant of commitment for the term of imprisonment

adjudged, may then be issued by the justice, commanding any constable to take the offender to the jail of the county, and the jailor to imprison him therein for the said term. The judgment for the fine may be enforced as other judgments of justices and may include in addition to the fine as aforesaid, all costs in the case, including the costs of arresting and keeping in prison the offender.

CONSTABLES.

To attend trials.

230. The constable shall attend all trials in which he may have served process, and preserve order and enforce the lawful commands of the justice during the same.

Duty to execute and return process.

231. It shall be the duty of the constable, on receipt of any summons, order, execution or other process, except a subpœna, to note thereon the time of receiving the same; to serve and execute the same, subpœnas included, according to the command thereof and the provisions of law; to make true return thereof to the proper justice on the return day, stating in such return the time and manner of executing the same; and to pay all money received by him in his official capacity, to the justice before whom the suit or proceeding is pending.

To pay all money to the justice.

Authority.

232. In serving and executing the orders and process issued by a justice, the constable may exercise the same authority over persons and property as it would be lawful for a sheriff to exercise under like orders or process from the circuit court.

Liability.

233. Every constable who shall neglect or refuse to serve or execute any lawful process or order in his hands, when in his power to do so, or shall make a false return thereon, or shall fail to return the same on the return day thereof, or shall fail to perform any duty incumbent on him by law, shall, with his sureties, be liable on his bond to the person sustaining injury thereby, to the extent of such injury, with ten per cent. damages thereon.

To deliver over process, &c., to successor.

234. Every constable on going out of office, shall deliver to his successor all process and orders in his hands, with his proceedings thereon endorsed, and also all property levied on, or attached, and remaining unsold, and take such successor's receipt therefor, including in different receipts the process and orders from different justices, and shall return such receipts respectively to the proper justices, who shall enter the same on their dockets and carefully preserve the originals. Upon the death of a constable, the same duty shall devolve on his personal representative.

MISCELLANEOUS.

Judgment in favor of deceased person—how revived.

235. Judgment in favor of any deceased person, may be revived in favor of his personal representatives, by an order of the justice to that effect, entered on his docket, or any docket lawfully in his possession, at least three days notice being first given to the adverse party to show cause, if any he have, why such order should not be entered.

Judgment against deceased.

236. If the judgment be against a deceased person, and the plaintiff desire to obtain judgment thereon against the personal representatives of the deceased, he shall proceed by summons or otherwise, as for the commencement of a new suit.

237. The remedy for the recovery of rent shall remain as heretofore. **Rent.**

238. No justice, or constable of the same township, shall purchase any judgment, or any interest in a judgment, on the docket of such justice or any docket in his possesion. Every person violating this provision shall, for every such offense, forfeit not less than ten nor more than one hundred dollars. **Justice and constable not to buy judgments.**

239. The common law and statute laws now in force relating to suits and proceedings before justices, and to the powers, duties and compensation of justices and constables, shall continue in force so far as they are not inconsistent with this act. **Former laws.**

CHAP. 123.—An ACT prescribing Taxes on Licenses.

Passed December 7, 1863.

Be it enacted by the Legislature of West Virginia:

1. The yearly tax on licenses to be paid into the state treasury shall be as follows: On every license to keep a hotel or tavern, if the yearly rental of the house and property is less than one hundred dollars, five dollars; if the yearly rental exceeds one hundred and is less than two hundred dollars, ten dollars; and if the yearly rental value thereof exceeds two hundred and is less than three hundred and fifty dollars, fifteen dollars; and if more than three hundred and fifty dollars and less than five hundred dollars, twenty dollars; if more than five hundred and less than eight hundred, twenty-five dollars; if more than eight hundred and less than one thousand, thirty dollars; and where the yearly rental of such house and property exceeds one thousand dollars five per centum on such excess shall be added. Every house where food or lodging is furnished to travelers or transient visitors, and payment required therefor, shall be deemed a hotel or tavern for the purposes of this act. **Tax on license to keep a hotel or tavern.** **What constitutes a hotel or tavern.**

2. On every license permitting theatrical performances to which admittance is obtained for money or other reward, ten dollars for each week, or less, of such performances. **Theatre.**

3. On every license permitting the sale of drinks or refreshments in a theatre, during such performances, one hundred dollars for each place of sale; and no abatement shall be made notwithstanding the privilege be not exercised for the period of a full year. **Sale of refreshments in theatre.**

4. On every license to sell by retail, native wine, porter, ale or beer, twenty dollars, and if continued more than a year by the same person, whether alone or in connection with another party, an additional tax of two per centum on the amount of sales of the preceding year. **Sale of native wine, porter, ale or beer, at retail.**

5. On every license to sell spirituous liquors, foreign wines or a mixture thereof, or any drink of like nature, one hundred dollars. **Sale of spirituous liquors.**

6. On every license permitting a bowling saloon or alley to be kept for a year, fifty dollars; provided, that where there is more than one such alley kept in any one room, fifteen dollars each shall be charged for the excess over one. **Bowling alley.**

Billiard tables.

7. On every license permitting a billiard table to be kept for a year, one hundred dollars; provided, that where there is more than one such table kept in any one room, fifty dollars each shall be paid for the excess over one table.

Public shows.

Circus.

Menagerie.

Side shows.

8. On every license permitting any public show, not a circus or menagerie, for each time of performance, ten dollars; and for every exhibition of a circus forty dollars, and for every exhibition of a menagerie, twenty dollars. All such shows, exhibitions and performances, whether under the same canvas or not, shall be construed to require a separate license therefor; and upon any such shows, exhibitions and performances being concluded so that an additional fee for admittance be charged, the same shall be construed to require an additional license therefor.

Non-resident dentist.

9. On every license to a non-resident dentist, ten dollars.

Non-resident daguerrean or photographist.

10. On every license to a non-resident daguerrean or photographist or any person engaged in any art or business of a like kind, ten dollars; and every one who has not resided in this state continuously for one year next preceding the issuing of such license, shall be deemed a non-resident under this and the preceding section of this act.

Sale of patent rights.

11. On every license to sell or barter patent rights, ten dollars.

Peddlers.

12. On every license to a hawker or peddler or itinerant vender of goods, wares and merchandize, if traveling on foot without a horse or horses, ten dollars; and if with one or more horses, with or without a wagon or vehicle of any kind, twenty-five dollars. Provided, that nothing herein shall be construed to require colporteurs, or persons selling religious books or tracts only, to have license therefor.

Proviso as to colporteurs.

Stock brokers.

13. On every license to a stock broker who deals exclusively in stocks, two hundred and fifty dollars, and he shall thereon have the right to sell stocks at auction or otherwise.

Brokers.

14. On every license to a broker or private banker who carries on for himself or any other person the business of buying and selling uncurrent money or funds, or exchanging one kind of money or funds for another, two hundred and fifty dollars; if located in a city with a population exceeding fifteen thousand, five hundred dollars.

Auctioneers.

15. On every license to an auctioneer or vendue master commencing business, twenty-five dollars; and if the place of business be in a town containing a population of two thousand inhabitants, thirty-two dollars; if the population exceeds three thousand, an additional tax of fifteen dollars for every thousand persons above that number, and at that rate for any fractional excess less than one thousand; but said specific tax shall in no case exceed three hundred and fifty dollars. On every license to an auctioneer or vendue master to continue the business after the same has been carried on for a year, one per centum upon the amount of sales of such auctioneer or vendue master; but in no case shall the tax on such sales exceed one thousand dollars.

Agents for foreign insurance companies.

16. On every license to any agent of a foreign insurance company commencing business after the first day of February, in any year, at

the rate of fifty dollars for every such company for which he acts, except in towns or cities containing a population of three thousand or upwards, in which cities or towns the license shall be one hundred dollars per annum.

Agents for express companies.

17. On every license to a person or company, carrying on any express business for compensation, or who shall act as principal agent of such person or company, who may commence business after the first day of February in any year, at the rate of two hundred dollars per annum. Upon payment of the tax hereby imposed, the said express company shall have the privilege of transacting business by its agents anywhere within the State.

Laws repealed.

18. Sections X, XI, XII, XIII, XIV, XV, XVI, XVII, XVIII, XIX, XX, XXI, XXII, XXIII, XXIV, XXV, XXVI, XXVII, XXVIII, XXIX, XXX, XXXI, XXXII, XXXIII, XXXIV, XXXV, XXXVI, XXXVII, XXVIII, XXXIX, and XL, of chapter forty of the Code of Virginia, second edition, are hereby repealed.

CHAP. 124.—An ACT to provide for the relief of the families of soldiers.

Passed December 7, 1863.

Be it enacted by the Legislature of West Virginia:

Boards of supervisors authorized to lay levy on taxable property of their counties.

The boards of supervisors of each county are hereby authorized, from time to time during the war, at any stated or special meeting, to levy so many cents on every hundred dollars value of the taxable property of their county, as they shall deem necessary, to provide adequate funds for the relief of the families of living and deceased soldiers of their county. But if any special meeting be called for such purpose, at least seven day's notice of the object of such meeting must be given to the supervisors constituting the board.

CHAP. 125.—An ACT in relation to the Board of Directors for the West Virginia Hospital for the Insane.

Passed December 7, 1863.

Be it enacted by the Legislature of West Virginia:

Appointment of board. Number and apportionment of same.

1. The governor shall, as soon as practicable, appoint a board of directors for the West Virginia Hospital for the Insane, consisting of seven persons, of whom not more than two shall be selected from the county of Lewis, and not more than one of the others shall be selected from any one county. Their term of office shall commence on the first day of January, eighteen hundred and sixty-four, on which day they shall hold their first meeting in the town of Weston. When assembled, they shall divide themselves into two classes, the first to consist of three members who shall hold their office for one year, and the second class to consist of four members who shall continue in office for two years. After the first appointment each class shall continue in office for two years, and when vacancies occur by the provisions of this act, or otherwise, the governor shall fill them by appointment.

Commencement of their term.

First meeting.

Regular term.

Vacancies.

Style as body corporate. Authority as such. How governed. Examination of patients.

Said board is hereby constituted a body corporate by the name of the "West Virginia Hospital for the Insane," and by that name may sue and be sued, and shall have and use a common seal, and are authorized to take charge of the hospital and of any real or personal estate given or to be given to it, or to themselves for its use; and shall be invested with all the rights, powers and privileges conferred, and subject to the rules, regulations and restrictions imposed by the eighty-fifth chapter of the Code of Virginia, second edition, so far as the same are applicable and not inconsistent with this act; provided, that any two or more of such directors may examine persons brought to the hospital as lunatic, and order those found to be such to be received.

Treasurer and his duties.

2. The board shall at their first meeting appoint a treasurer, who shall give bond in such penalty as shall be approved by the board. He shall receive all money belonging to the hospital and disburse it under orders of the board, and settle his accounts as treasurer, semi-annually. His draft on the treasury for an appropriation shall be under the order of the board, a copy of which shall accompany the draft; no such draft shall be allowed by the auditor until all money drawn for the year preceding shall be accounted for.

Report of board to the governor.

3. The board now in office shall, on or before the first day of January next, and the board of directors shall annually thereafter, on or before the first day of January, report to the governor, for the information of the legislature, the condition of the hospital, with a full account of their contracts, receipts, disbursements and proceedings.

Law repealed. Proviso.

4. The sixteenth section of the eighty-fifth chapter of the Code of Virginia, second edition, is hereby repealed; but the board of directors now in office shall remain in office and continue to discharge the duties thereof until the first day of January next.

CHAP. 126.—An ACT making additional Appropriations.

Passed December 7, 1863.

Be it enacted by the Legislature of West Virginia:

There is hereby appropriated for the purposes herein specified, the following sums, viz:

For expenses of legislature.

For expenses of the legislature, for the session commencing the twentieth day of June, eighteen hundred and sixty-three, including pay of officers, printing, stationery, rent of Linsley Institute, from the twentieth day of June to the eighth day of December, eighteen hundred and sixty-three, furniture, flag, &c., thirty-seven thousand five hundred dollars.

And civil offices.

For salaries of officers of civil government, one thousand dollars.

Expenses of judiciary

For salaries and mileage of judges of supreme court of appeals, and judges of circuit courts, seven thousand dollars.

For the salary of the clerk of the supreme court of appeals, five hundred dollars.

For contingent expenses of courts, one thousand dollars.

For criminal charges, including witnesses, jurors, and jailors' fees, two thousand dollars.

Convicts.

For expenses of convicts in jail prior to the twentieth day of June, eighteen hundred and sixty-three, one thousand dollars.

For expenses of convicts in jail since the twentieth day of June, eighteen hundred and sixty-three, one thousand five hundred dollars.

Lunatics,

For expenses of lunatics in asylums in other states, in jails and other places, two thousand dollars.

And auditor's office.

For contingent expenses of auditor's office, including stationery, printing, books, postage and fuel, two thousand dollars.

Public printer.

For public printer, one thousand five hundred dollars.

Quarter-master general.

For salary of quarter-master general, five hundred dollars.

For contingent expenses of quarter-master general's office, one thousand dollars.

Auditor's clerk.

For salary of clerk in auditor's office, three hundred dollars.

Adjutant general's clerk.

For salary of clerk in adjutant general's office, three hundred dollars.

Vaccine agent.

For salary of vaccine agent, one hundred dollars.

Seals.

For expenses of procuring seals and presses for state, courts, and recorders, one thousand two hundred dollars.

Coroner's inquests.

For expenses of coroner's inquests, two hundred dollars.

Militia claims.

To pay militia claims provided for by act passed nineteenth November, eighteen hundred and sixty-three, entitled "An Act providing for the payment of certain militia claims allowed by regimental courts," six thousand dollars.

John W. Boner.

To John W. Boner, commissioner for taking soldiers' vote on amended constitution, twenty-two dollars and sixty cents.

John S. McDonald.

To John S. McDonald, for same kind of services, forty dollars.

Henry Startzman.

To Henry Startzman, for same kind of services, forty dollars.

M. B. Reed.

To M. B. Reed, for same kind of services, thirty-four dollars.

John Bowyer.

To John Bowyer, for same kind of services, thirty-two dollars.

J. P. B. R. Smith

To J. P. B. R. Smith, for same kind of services, thirty-two dollars.

S. G. W. Morrison.

To S. G. W. Morrison, for same kind of services, twenty-eight dollars.

John Goudy.

To John Goudy, for same kind of services, thirty dollars.

S. W. Hall.

To Sylvanus W. Hall, for same kind of services, sixty dollars.

D. S. Montague.

To D. S. Montague, for same kind of services, fifty-two dollars.

Joseph Odell.

To Joseph Odell, for printing governor's proclamation for executive committee, twelve dollars.

Campbell & McDermot.

To Campbell & McDermot, for printing for executive committee, in May and June, eighteen hundred and sixty-three, two hundred and fifteen dollars.

Election in Wirt

For expenses of holding election on the twenty-sixth day of March, eighteen hundred and sixty-three, on the amended constitution in Wirt county, twelve dollars.

Election in Jackson.

For expenses of holding election on the twenty-sixth day of March, eighteen hundred and sixty-three, on amended constitution in Jackson county, seventy-two dollars.

C. M. Rice, John Wetzel, and David Woodruff.

To C. M. Rice, John H. Wetzel, and David Woodruff, of Jackson county, for holding an election for senator, by order of Governor Peirpoint, in June, eighteen hundred and sixty-one, twenty-five dollars.

Joseph Jenkins.

To Joseph Jenkins, of Preston county, for claim audited and allowed by joint committee on claims, nine-two cents.

A. T. Holt.

To Alfred T. Holt, of Preston county, for claim audited and allowed by same committee, one hundred and ninety-three dollars, and eighty-seven cents.

M. F. Stuck.

To Matthias F. Stuck, of Preston county, for claim audited and allowed by same committee, twelve dollars and eighty cents.

W. T. Frailey.

To William T. Frailey, of Preston county, for claim audited and allowed by same committee, twenty-one dollars and sixty-five cents.

W. S. Fansler.

To William L. Fansler, of Preston county, for claim audited and allowed by same committee, twelve dollars and seventy-nine cents.

S. N. Pearce.

To Samuel N. Pearce, of Preston county, for claim audited and allowed by same committee, five dollars.

James Miller.

To James Miller, of Preston county, for claim audited and allowed by same committee, twelve dollars and thirty cents.

Smith Crane.

To Smith Crane of Preston county, for claim audited and allowed by same committee, twenty-two dollars, and fifty-nine cents.

Lydia Hetherington.

To Lydia Hetherington, of Preston county, for claim audited and allowed by same committee, twenty-seven dollars and thirty cents.

J. H. Manown.

To James H. Manown, of Preston county, for claim audited and allowed by same committee, thirty dollars.

Jacob Weaver.

To Jacob Weaver, of Preston county, for claim audited and allowed by same committee, forty-seven dollars and twenty-five cents.

Joseph Brown.

To Joseph Brown, of Preston county, for claim audited and allowed by same committee, twenty-nine dollars and thirty-nine cents.

Wm. Ewing.

To William Ewing, of Ohio county, on claim audited and allowed by same committee, forty-dollars and twenty-five cents.

A. B. Fleming.

To A. Brooks Fleming, of Marion county, for claim audited and allowed by same committee, seven dollars.

J. M. McWhorter.

To J. M. McWhorter, of Roane county, on claim audited and allowed by same committee, thirty-two dollars and seventy-four cents.

Expenses of lunatics at Weston

For current expenses for maintaining lunatics in the hospital at Weston, one thousand eight hundred dollars.

Board of public works.

For contingent expenses of the board of public works, fifty dollars.

Election in Boone.

For expenses of holding elections on amended constitution, on March twenty-sixth, eighteen hundred and sixty-three, in Boone county, twenty dollars.

Janitor to executive offices.

To janitor to executive offices, one hundred dollars.

Alfred A. Hagar.

To pay Alfred A. Hagar for time and money spent in traveling and organizing Captain Joseph H. Barker's company of state troops at Brownstown, in June, eighteen hundred and sixty-three, seventeen dollars.

D. D. T. Farnsworth.

To pay D. D. T. Farnsworth, a member of the joint special committee, to visit the lunatic asylum at Weston, twenty-eight dollars.

L. E. Davidson.

To pay L. E. Davidson, a member of said committee for same service, twenty-eight dollars.

Lewis Ballard.

To pay Lewis Ballard, a member of said committee, for same service, twenty-eight dollars.

Wm. P. Hubbard.

To pay William P. Hubbard, clerk of the senate committee on military affairs, twenty-four dollars.

CHAP. 127.—An ACT confirming the election of George S. M. King.

Passed December 7, 1863.

Be it enacted by the Legislature of West Virginia:

The election of George S. M. King, at the election held in Jackson county on the twenty-second day of October, in the year one thousand eight hundred and sixty-three, to the office of sheriff of said county, is hereby legalized; and he shall have sixty days from the passage of this act within which to take the oaths and give the bond required by law.

As sheriff of Jackson.

Time allowed to qualify.

CHAP. 128.—An ACT to permit the handwriting of subscribing witnesses to be proved in certain cases.

Passed December 7, 1863.

Be it enacted by the Legislature of West Virginia:

When a subscribing witness to a will or other instrument of writing is within the so-called Confederate States, or any territory under control of the rebel army, his handwriting may be proved as if he were dead, and with the same effect.

Where witnesses have gone into the rebellious states.

CHAP. 129.—An ACT authorizing the publication of an extra number of the laws.

Passed December 7, 1863.

Be it enacted by the Legislature of West Virginia.

The clerk of the house of delegates is hereby authorized to contract with the public printer for printing, in addition to the number heretofore ordered, three thousand five hundred copies, in pamphlet form, of the laws passed at the present session of the legislature, at a cost not exceeding seventeen cents per copy, unless the number of pages exceed one hundred and sixty, in which case he may be allowed one cent on every ten pages over that number, to be delivered by such clerk, one-third to the members of the senate and two-thirds to the members of the house of delegates, in numbers proportioned to the population represented by them, for distribution among the voters of their several districts and counties.

Clerk of House of Delegates authorized to contract with public printer.

Distribution of copies.

CHAP. 130.—An ACT to require Justices to discharge certain duties heretofore performed by Coroners.

Passed December 7, 1863.

Be it enacted by the Legislature of West Virginia:

1. Every justice upon being notified that the dead body of a person, whose death is supposed to have been caused by violence or other unlawful act, and not by casualty, is within his township, shall forthwith issue his warrant directed to a constable thereof, who shall proceed to execute and make return of the same, commanding such constable to

Justice to issue warrant to constable.

To summon jury of inquest.

summon twelve suitable residents of the said township to be in attendance on such justice as jurors, at a place and on a day and hour, to be designated in the warrant, to make inquisition upon the view of the body of the person named therein, or of a person unknown as the case may be, how such person came to his death; and may, by endorsement on such warrant, or by subpœna, command the officer to whom the same is delivered to summon such witnesses as the justice may designate, or as the constable may be informed or have reason to believe have knowledge of the circumstances attending such death, to be in attendance upon the said inquest at such time as may be designated in such endorsement or subpœna. In case of the inability or failure of such justice or constable to act, any other justice or constable of the county may perform the respective duties imposed by this and the succeeding section, and be entitled to the same fees and subject to the same penalties.

And witnesses.

Failure to act of justice or constable.

Government of proceedings.

2. The subsequent proceedings in any such case as is mentioned in the preceding section, shall be in accordance with and governed by the provisions of the third and following sections of the two hundred and second chapter of the code of Virginia, second edition, except the last clause of the eleventh section, which is hereby repealed; and except that the word "coroner," wherever it occurs, shall be construed to mean the justice who issued the warrant as aforesaid; the words "unlawful violence," in the sixth section, to mean violence or other unlawful act; the words "county or corporation court," in the ninth section, to mean circuit court of the county in which the dead body was found; and the words "the court of the coroner's county or corporation," and the word "treasury," in the ninth section, to mean, respectively, the board of supervisors and the treasury of such county. For the services under this and the preceding section, the justice shall be entitled to a fee of five dollars, and the constable to a fee of three dollars, to be audited and paid from the treasury of such county as other claims are audited and paid.

Fees of justice and constable.

CHAP. 131.—An ACT for the collection of Taxes.

Passed December 7, 1863.

Be it enacted by the Legislature of West Virginia:

By whom taxes collected. When collection to begin.

1. The taxes assessed in any county shall be collected by the sheriff or collector thereof. Each sheriff or collector shall commence his collection yearly on the first day of July, or as soon thereafter as he may receive a copy of the assessor's books, and may, after such time, make distress therefor when the tax-payer is about to remove the property from the county.

Distraint in case of removal of property.

Payment of taxes on lands by non-residents.

2. A person not residing in the county in which his land may lie, may, before the first day of October in any year, pay into the treasury, in advance, the taxes assessed on such land for such year, upon a certificate of the auditor, for which a fee of fifty cents shall be paid to that officer. A list of such payments shall be transmitted by said

auditor, immediately after the first day of October, to the sheriffs or collectors of the counties wherein such lands shall be situated, who shall be governed accordingly.

Collector's notice

3. It shall be the duty of the sheriff or collector to give notice by posting at the public place of meeting of the people of each township, and at two other public places in the township, for at least thirty days before the time appointed, that he will attend at such place, on three several days to be fixed by him, one of which, if practicable, shall be a day fixed for a public meeting of the people of said township, between the first day of September and the first day of November following, for the purpose of receiving taxes due by the people residing or paying taxes in said township, and that he will make a discount of two and a half per centum to all such persons as shall pay all their taxes on or before either of the said days, and not otherwise; which discount the said sheriff or collector shall allow out of the per centage allowed to him for collecting said taxes.

And discount.

Cases where distress for taxes prohibited.

4. No distress shall be made for taxes or levies where the sheriff or collector has had more than two years to collect the same, except in counties where the collection of taxes is rendered unsafe or dangerous by reason of war or other like cause, unless it be for taxes returned delinquent and sent out by the auditor for collection, as provided by law. But a sheriff or collector of a former term may, notwithstanding the expiration of his term of office, by himself or his deputies, have the same powers of distress and sale as he possessed before said term expired, and which right of distress and sale shall continue for the term of two years from the time such right accrued, except in counties where the collection of taxes is rendered unsafe or dangerous by reason of war or other like cause; but no deputy shall be permitted to qualify for such collections after the principal's office has expired.

Sheriff's powers of distress and sale after expiration of term.

But qualification of deputy forbidden.

Time of distraint for taxes.

5. Any goods or chattels in the county belonging to the person or estate assessed with them, may be distrained therefor by the sheriff or collector, after the first day of November in each year.

Distraint of property of tenants.

6. The goods and chattels of the tenant or other person in possession, claiming under the party or estate assessed with taxes on land, may be distrained if found on the premises. But when taxes are assessed wholly to one person on a tract or lot of land, part of which has become the freehold of another by a title recorded before the commencement of the year for which such taxes are assessed, the property belonging to the owner of that part shall not be distrained for more than a due proportion of said taxes.

Distraint where land lies in two counties.

7. Where taxes are assessed on a tract of land lying partly in one county and partly in another, the sheriff or collector of the county in which the taxes are so assessed, may distrain on that part of the land lying in the other county, in the same manner as if such part were in his own county.

Distraint where there are deeds of trust or mortgages.

8. No deed of trust or mortgage upon goods or chattels shall prevent the same from being distrained and sold for taxes assessed against

the grantor in such deed, while such goods and chattels remain in the grantor's possession; nor shall any such deed prevent the goods and chattels conveyed from being distrained and sold for taxes assessed thereon, no matter in whose possession they may be found.

Where property cannot be found, debts owing from or property in the hands of others may be attached.

9. When the officer cannot find sufficient goods or chattels to distrain for taxes, any person indebted to or having in his hands estate of the party assessed with such taxes, may be applied to for payment thereof out of such debt or estate, and a payment by such person of the said taxes, either in whole or in part, shall entitle him to a charge or credit for so much on account of such debt or estate against the party so assessed. If the person applied to do not pay so much as it may seem to the officer ought to be recovered on account of the debt or estate in his hands, the officer shall, if the sum due for such taxes do not exceed one hundred dollars, procure from a justice a summons directing such person to appear before some justice at such time and place as may seem reasonable; and if the sum due exceed one hundred dollars, he shall procure from the clerk of the circuit court of the county a summons directing such person to appear before the circuit court for the county on the first day of the next term thereof. And from the time of the service of any such summons, the said taxes shall constitute a lien on the debt so due from such person, or on the said estate in his hands.

Proceedings in attachment.

10. If such summons be returned executed, and the person so summoned do not appear, judgment shall be entered against him for the sum due for such taxes, and for the fees of the clerk and of the officer who executed the summons.

11. If the person so summoned appear, he shall be interrogated on oath, and such evidence may be heard as shall be adduced, and such judgment shall be rendered as upon the whole case may seem proper.

Credit to tenant for payment of taxes against owner.

12. A tenant from whom payment shall be obtained by distress or otherwise, of taxes due from a person under whom he holds, shall have credit for the same against such person out of the rents he may owe him, except where the tenant is bound to pay such tax by an express contract with such person.

And to fiduciary for payment of taxes against estate.

13. Where a tax is paid by a fiduciary on the principal, interest or profits of money of an estate laid out or invested, either under an order of court or otherwise, the tax shall be refunded out of such estate.

Collectors' delinquent lists.

14. The sheriff or other collector, after ascertaining which of the taxes assessed in his county cannot be collected, shall as soon as practicable, in each year, after the first day of October, make out lists of three classes: First, a list of property on the assessor's land book improperly placed thereon, or not ascertainable, with the amount of taxes charged on such property; secondly, a list of other real estate which is delinquent for the non-payment of the taxes thereon; and thirdly, a list of such of the taxes so assessed, other than on real estate, as he is unable to collect; which lists shall designate the delinquencies of each township separately.

15. In the lists mentioned in the preceding section, the names of the persons charged with the taxes, shall be placed alphabetically. The list mentioned secondly, shall be in the following form:

"*List of real estate in the county of——delinquent for the non-payment of taxes thereon, for the year—*

Name of person.	Residence.	Estate held.	Quantity of land.	Description and location of land.	Distance & bearing from court house.	Amount of taxes.	Why returned delinquent.

Form of collector's affidavit.

And the sheriff or collector returning such list, shall at the foot thereof make and subscribe the following oath: "I, A. B., sheriff (or collector) of the county of——do swear, that the foregoing list is, I verily believe, correct and just; that I have received no part of the taxes for which the real estate therein mentioned is returned delinquent, and that I have used due diligence to find property within my county liable to distress for the said taxes, but have found none."

Delinquent lists to be sworn to.

And one publicly posted.

16. The lists mentioned first and thirdly in the fourteenth section, shall each of them be verified by the oath of the sheriff or collector, and a copy of that mentioned thirdly, shall be posted at the front door of the court house of the county, on a court day, or during the sitting of the board of supervisors next preceding or during the term, or sitting at which the list may be presented to the board of supervisors.

Lists of taxes uncollected in disturbed counties,

Collectors allowed to make and return same after expiration of term.

17. If by reason of war or other like cause, it be rendered unsafe and dangerous to collect the taxes in any portion of any of the counties within the regular period for the collection of the same, the sheriff or collector shall make out lists of such taxes, not collected from such cause, as provided for in sections fourteen and fifteen, and return the same as required in said sections for other lists; and the sheriffs or collectors of the present year, or of any former term, may, notwithstanding the expiration of their term of office, by themselves or their deputies, make out such lists, and return the same at any time within six months after the passage of this act.

Delinquent lists to be laid before boards of supervisors.

And certify to the auditor.

And collectors forbidden thereafter to receive such taxes.

18. Each of the before named lists shall be presented to the board of supervisors of the county, and examined by said board. The board having become satisfied of the correctness of the said lists, or having corrected them if erroneous, shall direct their clerk to certify copies thereof to the auditor, and a copy of the first mentioned, to the assessor, who shall correct his books accordingly. The original lists shall be preserved by the clerk in his office. After the said copies are so certified, the sheriff or collector shall not receive any of

Payment of same into treasury.

the taxes mentioned in the said lists, but they may be paid into the treasury, or the personal property tax may be paid to the county treasurer, who shall be accountable therefor in like manner as for any revenue, or taxes that may come into his hands.

Penalty for false return as delinquent.

19. Any officer who shall return in any such list real estate, persons or property, as delinquent for the non-payment of taxes, when such taxes, or any part thereof shall have been actually received by him, shall forfeit, if the return was by design, ten times the amount of taxes so actually received, and if the return was by mistake, twice the amount; one-half of which forfeiture shall in each case be to the State, and the other half to the persons charged with such taxes. And any such officer who shall return in such list any real estate, persons or property as delinquent, when he had either found or might have found sufficient property within his bailiwick liable to distress for the taxes for which such real estate, persons or property are returned delinquent, shall forfeit to the State a sum equal to five times the amount of the said taxes.

Disposition of the certified copies of delinquent lists.

Duty of auditor respecting same.

20. The copies of the lists directed to be certified to the auditor, shall be placed by the clerk in a sealed enclosure directed to that officer, and delivered to the sheriff or collector by whom the lists were returned. The auditor shall credit the sheriff or collector with the amount of taxes mentioned in such lists, if the said lists be presented at his office before the first day of May next after the said taxes were assessed, or within six months after the passage of this act, but not otherwise.

Regulations respecting the delinquent lists.

21. The lists required by the fourteenth section of this act to be made out by the sheriff or collector, shall not be allowed unless they have been first submitted to the assessor for the district to which they relate, or in case of his death, to some other assessor, or a commissioner to be appointed by the board of supervisors, or the clerk of the said board, touching the propriety of such lists, and each case therein contained verified by the oath of the sheriff or collector. Copies of the second and third lists heretofore returned, and of the third list mentioned in the said section, when it shall hereafter be allowed, shall be placed by the auditor in the hands of any sheriff or collector of any county for collection, to be returned within one year thereafter, and accounted for as other assessed taxes; or if the auditor see fit, he may place such copy in the hands of any constable as collector, who shall have the same power of distress as sheriffs or collectors, and shall account for the same in like manner, and he and his securities shall be subject to all such remedies as are given the State against sheriffs for failure to pay; and his compensation shall not exceed twenty per centum of the amount collected and paid into the treasury.

22. The list mentioned in the seventeenth section of this act shall be returned by the auditor to the sheriff or his successor, whenever the obstructions to the collection of the taxes therein contained shall be removed, who shall proceed to collect and account for the same, as in other cases.

23. The taxes assessed under the law providing for the assessment of taxes on persons and property, and collected under this act, shall be paid into the treasury as follows: Three-fourths of such taxes shall be paid on or before the fifteenth day of December, in the year in which the same may be assessed, and the remaining one-fourth thereof on or before the fifteenth day of March next thereafter, save only as follows: A sheriff or collector, the court-house of whose county is more than thirty miles from the seat of government, shall be allowed in addition one day after the said fifteenth day of December and fifteenth day of March for every thirty miles distance therefrom; a sheriff or collector who may not have qualified, or who may not have received the books of the assassor before the first day of August, shall be allowed five months from his qualification, or the delivery of said books to such sheriff or collector, to pay the same into the treasury.

Payment into the treasury of taxes collected.

24. Every sheriff or collector shall be allowed a commission of five per centum on the amount of taxes with which he is chargeable; and if he shall punctually pay the same into the treasury, within the time required by law, he shall be allowed an additional compensation of two and a half per centum. Any sheriff who may have paid into the treasury taxes for any tax-payer shall have the same remedy for the collection of the same as if they had not been so paid.

Collectors' commissions.

Collectors' remedy for taxes advanced.

25. In case of a failure so to pay, the auditor shall immediately publish notice of such failure in some newspaper at the seat of government, setting forth that on a certain day, within three months after such failure, he will file in the office of the circuit court of the county, wherein is the seat of government, with the clerk thereof, an accurate account with which any such sheriff or collector may be chargeable on account of such taxes; and thereupon such clerk shall enter up a judgment against such sheriff or collector for the amount wherewith he is so chargeable, with lawful interest thereon from the time of such failure until payment thereof and fifteen per centum damages in addition thereto, unless the auditor shall recommend a reduction thereof; which judgment shall have the same validity, and be subject in all respects to the like proceedings thereupon as if it had been rendered by the court. But any person aggrieved by such judgment may apply to the circuit court at the seat of government, within six months after it is so entered up, to set aside said judgment and try said cause. The court for good cause, may set aside such judgment and proceed to try the case upon its merits, and affirm the same or render such judgment as it may consider proper. In any case of failure to pay, proceedings may be had according to the forty second chapter of the code of Virginia, second edition, only such proceedings shall be had in the circuit court at the seat of government of the state of West Virginia, and in the name thereof. And from the time a notice shall be served, under the said chapter, on any such sheriff or collector, the property of such sheriff or collector shall be bound for the payment of any judgment which may be rendered upon such proceeding, in the same manner that the property is bound under the third section of chapter one hundred and eighty-eight of the code, upon delivery of a *fieri facias*

Proceedings against collectors who fail to pay.

Property of collector bound for judgment.

to a sheriff or other officer, and shall also operate as a lien on the real estate of such sheriff or collector from the time of the service of such notice. The right of the state to proceed by notice or otherwise against the sureties of such sheriff or collector, shall not be effected thereby.

Right of state to proceed against sureties.

Failure of collectors to pay over at regular time.

26. Every sheriff or collector of the revenue who does not pay the same into the treasury within such time as to be entitled to the additional compensation allowed for punctual payment, shall be charged with interest on the revenue so due and unpaid from the time when the same was regularly payable into the treasury. The said interest shall be at the rate of twelve per centum per annum; but if the revenue is not in arrear more than three months, the auditor shall abate six per centum of said interest. If the revenue has been in arrear three months, and not more than six months, then the auditor shall abate four per centum. If the revenue has been in arrear for six months, and not exceeding nine months, then the auditor may abate two per centum.

Appointment of collectors by auditor in certain cases.

27. The auditor may, with the approval of the executive, appoint a collector to collect arrears of taxes in any county which has no sheriff, and may allow him a reasonable compensation, to be agreed on before the service is commenced, which compensation shall not exceed twenty per centum on what may be collected and paid into the public treasury.

Time allowed to, and bond of, such collector.

28. Such collector shall have a reasonable time allowed him by the auditor, and shall, before he acts, execute a bond approved by the said auditor, conditioned that he will faithfully collect the said arrears of taxes, and account for and pay the same into the treasury within the time allowed. The said bond shall remain filed in the auditor's office.

Laws repealed.

29. All acts and parts of acts coming within the purview of this act, are hereby repealed.

Commencement.

30. This act shall not be in force until the first day of July, eighteen hundred and sixty-four, except the seventeenth section thereof, which shall be in force from the date of the passage of this act.

CHAP. 132.—An ACT to prescribe the powers, duties and compensation of Justices and Constables, in cases of misdemeanor and breaches of the peace.

Passed December 7, 1863.

Be it enacted by the Legislature of West Virginia:

Conservators of the peace.

Authority of justices as such,

And of constables.

1. Every justice and constable shall be a conservator of the peace within his county; and as such, every justice shall exercise all the powers, and discharge all the duties, which justices are authorized to exercise, and required to discharge, by chapter two hundred and one of the code of Virginia, second edition. Every constable, as such conservator, if any person shall, within his county, and in his presence, make an affray, or threaten to beat, wound or kill another, or to

commit violence against his person or property; or contend with angry words to the disturbance of the peace; or improperly or indecently expose his person; or appear in a state of gross intoxication in a public place, may, without warrant or other process, or further proof, arrest such offending person and carry him before some justice of the township where such offence is committed; who, upon hearing the testimony of such constable and other witnesses, if any are then and there produced, if in his opinion the offence charged is proved, shall require the offender to give a bond or recognizance with security, to keep the peace, and be of good behavior for a term not exceeding one year.

Further authority of justice as conservator of the peace.

2. If any offence enumerated in the preceding section is committed in the presence of a justice within his county, or the offender being brought before him, the commission thereof is proved to his satisfaction, he may, besides requiring a bond or recognizance, with security, as provided in the preceding section, impose upon the offender a fine not exceeding five dollars. If such bond or recognizance is not then and there given, or such fine is not then and there paid, the said justice shall commit the offender to the jail of his county, there to remain until such bond or recognizance is given, and such fine is paid; but no imprisonment under this section shall continue more than ten days, at the end of which the sheriff or jailor shall discharge the prisoner, unless he has been commanded by sufficient authority to detain him for some other cause.

Justices' jurisdiction in cases of misdemeanor.

3. Justices shall have exclusive original jurisdiction of misdemeanors and breaches of the peace occurring within their respective townships, which are punishable by a fine not exceeding ten dollars, or by imprisonment for not more than ten days; but in any case in which the law allows a fine of over ten dollars or imprisonment for more than ten days to be imposed, the justice shall not have jurisdiction.

Issue of warrant.

Contents of warrant.

4. Upon the complaint on oath of any credible person, that another has committed within his county any misdemeanor or breach of the peace cognizable by a justice, the justice to whom such complaint is made, shall forthwith issue his warrant, directed to a constable of his township, or of that in which the alleged offence appears to have been committed, commanding such constable to arrest the offender and carry him before a justice of the latter township, to whom such warrant shall be made returnable; and may by endorsement on such warrant, or by subpœna, further command the constable to whom such warrant is directed, to summon such witnesses as he may designate, to appear before the justice to whom the warrant is returnable on the same or a subsequent day, if the offender shall be then arrested, and if not, then upon such arrest. On the appearance of the accused, the justice may proceed to try the case, but may grant continuances from time to time for good cause shown by the accused, or, if the justice is of opinion that the circumstances of the case require a continuance thereof, or that the ends of justice will be thereby promoted; but in no case shall any continuance be for more than twenty days. The accused shall be entitled to subpœnas for such witnesses as he may desire to have examined on his part, which shall be issued by the justice, at his request, and served by the constable to whom the same are directed.

Continuance of trial.

Witnesses for the accused.

Trial by jury.

5. If the alleged offence is punishable by a fine exceeding five dollors, or by imprisonment, the accused, at any time before the trial is begun, may demand a trial by jury, which shall be granted him as of right. The justice shall thereupon cause a jury of six persons to be selected and impannelled for the trial of the accused, in the same manner and subject to the same regulations as are prescribed by law for selecting and impanelling juries in civil suits before justices, and any person summoned or called as a juror who shall fail to attend or refuse to serve, shall be liable to the same penalty as in a civil suit before the justice.

Penalty for refusing to serve as juror.

Duties of jury.

6. When a jury is sworn in trials before a justice for misdemeanors and breaches of the peace, they shall say by their verdict whether the accused is guilty or not guilty of the offence charged, according to the evidence produced before them, and the law of the case. If they find him guilty, they shall assess the fine to be paid, or the duration of the imprisonment, within the limits fixed by law. Where by law the punishment may be either fine or imprisonment, or both, it shall be determined by their verdict, and the justice shall render judgment in accordance therewith.

Judgment of justice.

Trial by justice.

7. When any such case is tried by a justice without a jury, he shall himself hear the witnesses, and decide according to their testimony, and such facts connected with the case as may be within his own knowledge. If he finds the accused guilty he shall fix the amount of the fine and the term of imprisonment, and render judgment accordingly.

Infliction of punishments.

8. Whether the trial is by jury or not, if the judgment is against the accused, it shall also be for the whole costs of the proceeding; and if it inflicts imprisonment, the justice shall by warrant, commit the accused to the jail of his county, there to remain for the term fixed by the jury. If the judgment also imposes a fine, or if a fine is the only punishment, and the same and costs of the proceeding are not immediately paid, or bond or recognizance with security approved by the justice given for the payment of both, at or before the expiration of thirty days from the day on which the judgment was rendered, the warrant hereby above directed, if imprisonment is required by the judgment, or a warrant issued by the justice for the purpose, shall require the accused to be detained in jail until the penalty and costs awarded by the judgment, and the jail fees, are paid; but no imprisonment for the non-payment of a penalty and the costs shall contin- no longer than ten days, counting where imprisonment is part of the judgment, from the expiration thereof.

Execution for costs.

9. In every case of a conviction under the provisions of this act, an execution may issue for the costs awarded by the judgment, to be levied on the goods and chattels of the offender. In every such case the justice and constable may issue their fee bills against the defendant for such costs in the case as were incurred at the request of the defendant, and are not included in the execution; and such fee bills shall have the same force as if they had been issued for fees accrued in civil cases, and be subject to the same regulations.

10. All fines collected under proceedings authorized by this act, shall be immediately paid by the justice or constable receiving the same, to the treasurer of the county, and duplicate receipts of the said treasurer be taken therefor, one of which shall be delivered to the clerk of the board of supervisors, and the other endorsed by the said clerk, and retained by the person paying the money, as required by the tenth section of the act passed November second, eighteen hundred and sixty-three, entitled "An Act defining in part the powers and duties and regulating the proceedings of the boards of supervisors in the several counties of the State." The treasurer shall enter every sum so paid to the credit of an account to be kept in his books under the heading, "General school fund." All claims by justices and constables of the county or others, for fees due them in proceedings authorized by this act, where such fees have not been collected on executions or fee bills as aforesaid, shall be submitted by them to the board of supervisors, at or before their stated meetings on the twentieth of June and December, annually; and if the board believe that such claims are justly due, and could not have been collected by the exercise of proper diligence, they shall order the same to be paid out of the said "General school fund," if sufficient, and charged to the said account. A correct statement of the said account, verified by the affidavit of the treasurer of the county, shall be forwarded by him to the auditor, on the first days of January and July, annually, or within seven days thereafter; and the said treasurer shall then pay into the treasury of the State the net proceeds of the said fines as exhibited thereby, to be applied as provided by the second section of the tenth article of the constitution. If the treasurer of any county fail to discharge any duty required of him by this section, he shall be fined not less than ten nor more than one hundred dollars for every such offence.

Payment of fines into county treasury.

To credit of general school fund.

Payment of justices' and constables' fees out of same.

County treasurer's report of same to auditor.

And his payment of fine into state treasury.

Penalty for failure.

11. Every person against whom judgment is rendered by a justice in a case of misdemeanor or breach of the peace, by which imprisonment is awarded, shall be allowed by such justice an appeal, as of right, to the circuit court of the county, upon giving bond or recognizance, with security approved by the justice, to appear before such court on the first day of the next term thereof and to satisfy such judgment as the said court may award against him. If such person, previous to the trial, has been in custody for want of bail which he is still unable to give, an appeal as aforesaid shall be allowed him without such bond or recognizance, but he shall continue in custody until the same is given.

Right of appeal of party against whom judgment is rendered.

12. When an appeal is allowed under the preceding section, the justice shall prepare and certify a transcript of his docket, and transmit the same, together with all the papers in the case, to the clerk of the circuit court of his county, who shall docket the case in his court, and the proceedings thereafter shall be the same, as near as may be, as if the accused had been presented or indicted by a grand jury; but the said court shall proceed to try the case upon its merits, without indictment or presentment, and shall admit all legal evidence offered on either side, whether the same was, or was not, offered before the justice, and give such judgment as the law and the evidence may re-

Transfer of papers by justice in case of appeal.

Proceedings of court.

quire. If the accused is found guilty, the judgment shall include the costs properly awarded against him by the justice, as well as those incurred in the said court. All subsequent proceedings shall be under, and according to, the judgment of the said court, and not that of the justice.

Style of proceedings before justices.

13. All criminal proceedings before, or by authority of a justice, shall be in the name of the state of West Virginia; but no costs or fees shall in any such case be charged or taxed against the State or any county thereof. Where, however, a county or township sues for a penalty imposed by itself, or by this act, it shall be liable for costs, as any private person is liable.

Justices' fees in criminal cases.

14. Every justice shall be entitled to the following fees in criminal cases and proceedings, to be recovered of the defendant if convicted, or to be paid by him if the services were rendered at his instance:

For every recognizance or bond to keep the peace, or be of good behavior, twenty-five cents.

For every warrant of arrest or commitment, twenty cents.

For docketing case on return of warrant of arrest executed, ten cents.

For all services rendered at the instance of the defendant, the same fees shall be charged as are allowed for similar services in civil causes.

For trial before a jury, fifty cents.

For trial without a jury, twenty-five cents.

For every subpœna for one or more witnesses, twenty cents.

For every warrant to summon a jury, twenty-five cents.

For swearing a jury, ten cents,

For swearing witnesses, five cents each.

For entering his judgment on his docket, and taxing the costs, twenty-five cents.

For issuing execution, twenty cents.

For granting an appeal, including taking the bond or recognizance, making and certifying a transcript of his docket, and transmitting the same, and the papers of the case to the clerk of the circuit court, ten cents for every hundred words.

For a second or subsequent warrant or execution, one-half of the fee allowed for the first.

In all other cases, the fees allowed in civil cases or by law to other county officers for similar services.

15. Constables shall be entitled to the fees heretofore prescribed by law.

Constables' fees.

Chap. 133.—An ACT to regulate the fees of Justices and Constables.

Passed December 8, 1863.

Be it enacted by the Legislature of West Virginia:

Fees of justice.

1. Every justice, for services performed by him by virtue of his office, may charge the following fees to the person at whose instance or request the services are done:

For summons to commence a civil action, twenty cents;

For every additional summons in the same action, fifteen cents;

For docketing an action commenced by appearance and agreement, twenty cents.

For every order of arrest, order of commitment or order of attachment, twenty-five cents;

For every subpœna for witness, ten cents;

For order of arrest against delinquent witnesses or jurors or in any case of contempt, and for trial and judgment in such case, seventy-five cents;

For swearing each witness, arbitrator or party, five cents;

For taking and certifying any affidavit in writing, twenty cents, or ten cents per hundred words, at the option of the justice;

For every continuance, ten cents;

For appointing a guardian for the suit for an infant plaintiff or defendant, ten cents;

For appointing special constable at request of either party, twenty-five cents;

For settling and allowing interrogatories, twenty-five cents;

For entering agreement for arbitration, ten cents;

For summons to arbitrators, fifteen cents;

For every undertaking filed in the suit, twenty-five cents;

For *venire* for jury, including the drawing of same, twenty-five cents;

For trying a jury case, seventy-five cents;

For trying a case without a jury, where defendant appears and defends the action, fifty cents;

For entering judgment, twenty-five cents;

For abstract of judgment for docketing in recorder's office, fifteen cents;

For transferring a judgment on docket, twenty-five cents;

For entering satisfaction of judgment, ten cents;

For issuing execution, twenty-five cents;

For issuing every additional execution, twenty cents;

For entering stay of execution, twenty cents;

For trying right of property levied on or attached, fifty cents;

For taxing costs, twenty cents;

For filing the papers in each suit, ten cents;

For every process or order not otherwise provided for, twenty-five cents;

For transcript from docket, and for other writings and copies not otherwise provided for, twenty-five cents, or ten cents per hundred words, at the option of the justice;

For transmitting or delivering papers to clerk of the circuit court in case of an appeal, twenty-five cents;

For taking and certifying acknowledgment of deed or other instrument of writing, twenty-five cents;

If executed by a married woman, ten cents in addition for certifying her examination and acknowledgment;

For taking depositions of witnesses, if done in an hour or less, seventy-five cents;

If not done in an hour, for any additional time, at the rate per hour of, seventy-five cents;

For certifying proof of account or claim against the estate of a testator or intestate, fifteen cents;

Fees of constable.

2. Every constable, for services performed by him by virtue of his office, may charge the following fees to the person at whose instance or request the services are done:

For service and return of summons to commence a suit, or every additional summons, thirty cents;

For serving and returning order of arrest, sixty cents;

For serving and returning order of attachment, twenty cents for each garnishee notified, and one dollar for taking property, including inventory and appraisement, besides the reasonable expenses of removing, securing and keeping the property attached;

For subpœna, for each person served therewith, twenty cents;

For summoning a jury and return of *venire*, fifty cents;

For levying an execution on personal property and return, thirty cents;

For posting notices of sale, twenty-five cents;

For money made under execution or attachment and paid to the justice, five per cent on the first fifty dollars, and three per cent on the residue;

For serving and returning other writs and notices not specified in this section, each, twenty-five cents;

For copy of any writ, notice, order or paper, ten cents per hundred words, and ten cents for any number of words less than one hundred;

For services not otherwise provided for, the same fees as sheriffs.

Fees of justice in criminal cases.

3. For services in criminal cases not otherwise provided for, the justice may charge to the county the following fees, to be audited and paid by the board of supervisors as other claims against the county:

For the warrant to arrest the person or persons accused, and take him before a justice for examination, including the summoning of witnesses, twenty-five cents;

For the examination of witnesses to ascertain whether such warrant ought to be issued, and against whom, fifty cents;

For the examination when the accused is apprehended and brought before him, fifty cents;

For recognizance of bail, warrant of commitment or discharge of the accused, twenty-five cents;

For recognizance of witnesses, each, ten cents;

For a search warrant, fifty cents.

Manner of collecting fees allowed by this act.

4. The justice and constable may issue their fee bills against the person at whose instance or request the services were rendered, for any fees lawfully chargeable for such services that have not been collected on execution or otherwise paid, except the fees chargeable to the county as aforesaid. Such fee bills shall have the force of an execution, and may be collected by the sheriff or collector of taxes of the

county, or the constable of the township in which the persons against whom they are issued respectively reside. The person collecting the same may retain, for his compensation, ten per cent on the amount duly accounted for and paid over to the officer entitled to receive the same. The twenty-fourth, twenty-fifth and twenty-sixth sections of chapter one hundred and eighty-four of the Code of Virginia, second edition, so far as the same are consistent with this act and other laws of the state, shall be held applicable to such fee bills.

Penalty for issuing false fee bill.

5. If any justice or constable issue a fee bill for any services not performed, or against any person not chargeable therewith, or for a greater amount than the law allows, he shall pay to the person against whom the same is issued, four times the amount so unlawfully charged; which may be recovered by such person before any court or any justice not interested, having jurisdiction.

Fees required in advance.

6. For any service to be rendered by virtue of his office, for which a fee is allowed by law, except fees chargeable to the state or a county, the justice or constable may require the proper fee to be paid before the service is rendered.

Justice's fee book.

7. The justice shall keep a fee book, or a memorandum or account upon his docket, so as to show underneath the title of each suit the costs made by each party, separately, for services rendered at the instance or request of each party; and also, to whom the same are due, whether to himself, the constable, witnesses or other persons; and shall note from time to time which of the items are paid so far as the facts may come to his knowledge.

Definition of "costs."

8. The costs to be included in the judgment or execution are those only made by the party in whose favor the judgment is rendered, and which have been paid by him, or which he is bound to pay if the same are not collected from the adverse party. But the costs made by the party against whom the judgment is rendered and which he is bound to pay, may be separately endorsed or noted on the execution, which shall then, so far as such costs are concerned, be equivalent to a fee bill. When costs are included in an execution, or endorsed or noted thereon, it shall show the sum due each person, whether justice, constable, witness or other person.

CHAP. 134.—An ACT providing for issuing Grants for land in certain cases.

Passed December 9, 1863.

Be it enacted by the Legislature of West Virginia:

Survey of entries made prior to June 20, 1863.

1. All entries made before the twentieth day of June, eighteen hundred and sixty-three, under the provisions of chapter one hundred and twelve of the Code of Virginia, second edition, which were in force on that day, and which have not heretofore been surveyed, shall be surveyed according to the provisions of the said chapter of the said Code. All plats and certificates of such surveys, whether heretofore or hereafter made; plats and certificates of all other surveys in

Return of plats and certificates of survey to sec'y of the state.

force on the said twentieth day of June, eighteen hundred and sixty-three, and copies of all plats and certificates of surveys heretofore filed in the land office at Richmond, on which no grants have issued and been delivered to the parties to whom issued, shall, before the expiration of three years from the passage of this act, be returned by those for whom the surveys are made, to the secretary of the state, and they may demand of him receipts for the same. And no grant shall issue for any land until the conditions imposed by section forty-three of the said chapter of the said Code be complied with by the person applying for the grant.

Entry of caveats.

2. Caveats may be entered in the office of the secretary of the state for the same causes that they might have been entered in the land office, under the provisions of chapter one hundred and twelve of the said Code of Virginia; and the secretary shall furnish to the person entering any caveat, a certified copy thereof, and if he desire it a certified copy of the certificate and plat of survey; and such caveat, and all other caveats now pending in any court of this state, shall be proceeded with in the manner provided in the said chapter; and for that purpose the words "land office," and "register of the land office," and "register," wherever they occur in said chapter, shall be read, "office of the secretary of the state," and "secretary of the state," when necessary to give effect to this act.

How proceeded with.

Filing copy of caveat pending in court to stay the issue of a grant.

3. In all cases of caveat now pending in the courts of this state, any person interested may file in the office of the secretary of the state, a copy of such caveat, together with a copy of the plat and certificate of the survey on which the same is founded, and this shall prevent the issuing of a grant on such plat and certificate of survey, until such caveat is tried according to this act and said chapter one hundred and twelve of the said Code.

Time for issuing grant.

4. Within not less than six nor more than nine months after the right to a grant is complete, in the manner herein and in the aforesaid chapter of the Code of Virginia prescribed, the secretary of the state shall cause to be made out to the party having the right, a grant for the land described in such surveys, or copies of surveys, to the following effect:

Form of grant.

"A. B., governor of the state of West Virginia, to all to whom these presents shall come, greeting: Know ye that in consideration of——, heretofore paid by——, into the treasury of the commonwealth of Virginia, there is granted by the state of West Virginia, unto the said——, a certain tract or parcel of land containing —— acres, lying in the county of——, &c., (describing the bounds of the land and the date of the survey,) with its appurtenances, to the said —— and his heirs forever. *In witness whereof,* The said A. B., governor as aforesaid, has set his hand, and caused the seal of the said state to be affixed hereunto, at——, on the——day of——, in the year——, and of the state the——

A. B."

Regulations for the completion and delivery of grant.

5. The secretary shall deliver such grant to the governor, by whom it shall be signed and sealed with the seal of the state, and returned to the secretary, who shall record and index the said grant, and the plat and certificate of survey on which it is founded, in well bound

books provided for the purpose at the public charge. The secretary shall certify the grant to have been recorded, and then deliver it to the party to whom it is made, or his order, or to the bearer of the receipt given by him for the survey on which such grant is founded.

6. For all services rendered under this act by the secretary, he shall be entitled to the same fees that the register of the land office of the state of Virginia would be entitled to for like services, to be charged, collected and accounted for in like manner; but in all cases in which plats and certificates of surveys have been returned to the land office at Richmond and all the fees there paid, the secretary shall not charge or receive any further fees. Fees of secretary.

7. The fifty-second and fifty-third sections of chapter one hundred and twelve of the said code of Virginia, are hereby repealed. Laws repealed.

CHAP. 135.—An ACT providing for the Appraisement of certain property.

Passed December 9, 1863.

Be it enacted by the Legislature of West Virginia:

1. Before any sale of property stayed by the provisions of the act passed January thirtieth, eighteen hundred and sixty-three, by the general assembly of Virginia, entitled "an act staying the collection of certain debts," shall be made, it shall be the duty of the officer or person authorized to make such sale, to appoint three discreet and reputable freeholders, to affix a valuation on such property, in manner and form following, that is to say: the said appraisers shall take and subscribe an oath before some person legally authorized to administer the same, to the effect that they will truly, justly and impartially examine, estimate and appraise the fair cash value of all such property as is exhibited to them for that purpose, and liable to sale. The said appraisers shall thereupon proceed to assess the value of each piece or parcel of said property as aforesaid, and make return of said valuation and appraisement, one copy to the officer and another copy to the recorder's office; to which they shall append their certificate that they have, after being duly sworn, fairly and impartially, to the best of their judgment, valued and appraised the property therein set forth; and shall each sign his name thereto with the proper date and place. Appointment of appraisers. Who are to take an oath. To value property under execution. Certified return of appraisement.

2. The officer or person legally authorized to sell as set forth in the preceding section, may thereupon, having given such notice of time and place as the law, decree or order, deed of trust or mortgage may prescribe, proceed to expose to sale to the highest bidder, the property so valued and appraised; and if bidders are found to purchase such property at seventy-five per centum of the valuation and appraisement, then the sale shall be valid, and the property shall pass to the bidder or purchaser; but if the bids shall not be seventy-five per centum of the valuation and appraisement, then the sale shall not be valid, and the officer or person authorized to sell shall withdraw said property from sale for the time, but may from time to time at in- Exposure of property to sale. Per cent of value property must bring to make valid sale.

Exposure of same to sale from time to time.

tervals of not less than ninety days, expose the same until purchasers may be found willing to bid the seventy-five per centum of the valuation and appraisement.

Condition imposed on defendant.

3. No defendant shall be entitled to the benefits of the provisions of this act, who shall not before the day of such sale take and file in the office of the recorder of his county the oath prescribed in the act passed on the sixteenth day of November, eighteen hundred and sixty-three, amending and re-enacting the first section of the act passed on the twenty-sixth day of June, eighteen hundred and sixty-three, entitled "an act concerning oaths and affirmations."

CHAP. 136.—An ACT concerning Slaves.

Passed December 9, 1863.

Be it enacted by the Legislature of West Virginia:

Slaves forbidden admission into the state for permanent residence.

In what case and time slaves so coming in are to be free.

Proviso as to loyal owners.

1. No person held to service or labor as a slave under the laws of any other state, territory or country, or who has been sent or taken out of this state with the consent of the owner, and was out of the state on the twentieth of June, eighteen hundred and sixty-three, shall be permitted to come or be brought into this state for permanent residence. Any such person or slave coming or brought into this state by or with the consent of his master or owner, or of any person legally representing or acting for or on behalf of such master, owner or person for six months, shall be thereafter free. Nothing in this section shall be construed to prevent loyal citizens from bringing into the state their slaves who may have fled from service, or who may have been removed by their owners to other loyal states holding slaves.

Removal of slaves from the state forbidden.

Punishment therefor.

2. It shall not be lawful to remove from this state any person held to service or labor as a slave, with the intent to deprive such person or the children thereafter born of such person, of the right to freedom under the seventh section of the eleventh article of the constitution of this state. Any person who shall so remove any slave from this state, or aid or abet another in so doing, shall be punished by confinement in the penitentiary not less than one or more than three years. If such removal be made by or at the instance or with the connivance of the owner, such slave shall thereafter be free.

Emancipation of slaves.

3. Any person may emancipate his slaves by deed or will. Slaves so emancipated shall not be liable, in any way, for any claim or taxes, whether contracted or due before or after the passage of this act, saving only for such actual liens as exist at the time of the passage of this act.

Care of infirm slaves emancipated.

4. If any slave emancipated by deed or will, be at the time he is emancipated unable to maintain himself on account of physical weakness or disability, or mental incapacity, the overseer of the poor for the proper township shall provide for his maintenance and charge the necessary expenses thereof, quarterly or annually, to the person who emancipated him or his estate, and may recover the same, from time to time, before any court or justice having jurisdiction.

5. The persons entitled to the services and labor of slaves emancipated by the constitution, on their attaining the ages of twenty-one and twenty-five years, may transfer their right; but such transfer shall be by deed or bill of sale duly recorded in the county of the purchaser; in which shall be set forth the time of the birth of such slave, as nearly as it can be ascertained, and the time when, under the provisions of the seventh section of the eleventh article of the constitution, he will be free. If the person transferring his right to such services, shall knowingly and wilfully insert, or permit to be inserted, in such deed or bill of sale, as the time when such slave will be free, a time later than the true time, he shall be liable to a fine of two hundred and fifty dollars.

Transfer of claim to the labor of slaves emancipated by the constitution.

Punishment for falsely stating age of such slave.

6. It shall be the duty of the assessors of the several counties of the state annually to list all children born of slave mothers within their respective districts after the fourth day of July, eighteen hundred and sixty-three, in such manner as to show the names and time of birth of such children, the names of the mothers and their respective owners, and the townships in which the latter respectively reside, and also to list all slaves who, at the time aforesaid, were under the age of ten years, and in a separate list those who were at that time over ten and under twenty-one years of age, showing, in each case, the names of such slaves, and the respective times of their birth as nearly as can be ascertained, and the names and townships of their respective owners. If the services and labor of any such slave have been transferred, or he has been emancipated, or has removed from the county, or has died since the previous list was prepared, the fact shall be noted on the proper list. These lists shall be filed and preserved in the office of the recorder for public inspection. Any person who shall knowingly and wilfully give to the assessor false information as to the time of birth of any such slave, shall be liable to a penalty of one hundred dollars. For every person properly listed by them under the provisions of this section, the assessors shall receive three cents, to be paid out of the county treasury.

Listing children born of slave mothers after July 4th, 1863.

And of slaves at that time under the age of 10, and over 10 and under 21, respectively.

Disposition made of lists.

Penalty for false statement as to birth of slave.

Assessor's fee.

7. Chapter one hundred and three of the Code of Virginia, second edition, except sections nine, eleven and twelve, is hereby repealed.

Laws repealed.

CHAP. 137.—An ACT providing for the establishment of a system of Free Schools.

Passed December 10, 1863.

Be it enacted by the Legislature of West Virginia:

1. In conformity with the provisions of the tenth article of the constitution, a system of free schools is hereby established, according to the provisions of this act, in order to provide the means of instruction for all the youth of the state, in such fundamental branches of learning as are indispensable to the proper discharge of their social and civil duties; and for this purpose each and every organized township within the several counties of this State, or which may hereafter be organized within the same, is hereby constituted a school district, to be confided

Establishment of free schools.

to the care and management of a board of education as hereinafter constituted; but the city of Wheeling, with parts of townships connected therewith, shall constitute but one school district.

City of Wheeling

2. At the time and place of holding elections for township officers, as provided in the act entitled "An act to regulate elections by the people," and in conformity with the provisions of the same, the qualified voters of the several townships shall, in addition to the officers therein specified, elect three school commissioners, of whom the one having the highest number of votes shall hold his office for the term of three years; the one having the next highest number of votes shall hold his office for the term of two years, and the one having the next highest number of votes shall hold his office for the term of one year; and annually thereafter at the time and place of holding township meetings and elections, and in conformity with the act regulating the same, one commissioner shall be elected who shall hold his office for the term of three years: provided, that if at the first election any two or more of the school commissioners elected shall have an equal number of votes, the persons so elected shall determine, by lot, the duration of their respective terms of office; and provided further, that no person shall be deemed ineligible to the office of school commissioner in consequence of having held the office the preceding term; and that after the first election two commissioners shall not be chosen from the same sub-division, if there be so many as three sub-divisions in the township.

Election of school commissioners.

Their term.

Proviso as to ties.

And as to eligibility.

3. The commissioners so elected shall, within ten days after being duly notified by the township clerk of their election, proceed to qualify, by taking the several oaths prescribed by law; which oaths the clerk of the township is hereby authorized to administer to the commissioners aforesaid; a copy of which oaths, signed by the commissioners aforesaid, shall be kept by him upon the files of his office. And if any vacancy should occur in the office of school commissioner by death, resignation, refusal to serve, or otherwise, the board of education of the township shall fill such vacancy within ten days after being informed thereof, by the appointment of some suitable person, who shall hold his office until the next annual township election, when a commissioner shall be elected for the unexpired term.

Qualification of commissioners.

Vacancies.

4. The commissioners so elected and qualified, together with the clerk of the township shall constitute the board of education of their proper township, and they and their successors in office shall be a body corporate in law, under the name and style of "The Board of Education of the township of——," and as such may purchase, hold and sell or convey real and personal property for the uses of education within their district, may receive any gift, grant, donation or devise; may become a party to suits and contracts; and do other corporate acts. They shall have the care, custody and management of, and be invested with the title to, all real and personal property for the use of the public schools within their district, and may manage or dispose of the same, as in their opinion will best subserve the interests of education and the benefit of the schools.

Township board of education—how constituted—authority of.

5. The clerk of the township shall be the secretary of the board of education, but shall have no vote, except in the case of an appointment to fill a vacancy in the office of school commissioner. He shall be present at all meetings of the board, and shall record in a book to be provided for the purpose, all their official acts and proceedings, which shall be a public record, open to the inspection of all persons interested therein; all which proceedings, when so recorded, shall be attested by his signature thereto as secretary of the board. He shall have the care of, and shall preserve in his office, all papers containing evidence of title, contracts and obligations; and in general shall record or keep on file in his office all such papers and documents as may be so required by any of the provisions of this act, or by the orders of the board of education. For his services he shall receive such compensation as the board of education may determine. In his absence the board may appoint a clerk *pro tempore.*

Duties of secretary thereof.

His compensation.

6. The board of education of each school district shall, so soon as practicable after they are duly elected and qualified, and annually thereafter, within ten days after the fourth day of July, take, or cause to be taken, an enumeration of all the youth, resident within their school district, between the ages of six and twenty-one years, distinguishing between males and females, and shall cause the result of such enumeration, verified by the oath or affidavit of the person taking the same, to the effect that such enumeration is correct, and that he has used all means within his power to have it so, to be recorded in the office of their secretary; which enumeration shall be transmitted by the said secretary to the county superintendent. They shall divide their district into convenient sub-divisions, assigning to each not less than fifty youths, between the ages of six and twenty-one years, except in cases where, in the opinion of the board, it is necessary to reduce the number; and shall cause to be taught in each, at the expense of the district, one school for not less than six months in the year, in which shall be taught, by competent teachers, orthography, reading, writing, arithmetic, English grammar and geography, with such other branches as the board may decide or the circumstances of the school may require. In making these sub-divisions due regard shall be had to any school house already erected, or school house site already procured, so far as may be and as shall best subserve the interests of free schools.

Enumeration of youth.

Sub-division of districts.

District schools, and branches taught therein.

District school houses.

7. The board of education shall take the control and management of all the schools within their district, in pursuance of which they shall be charged with the following powers and duties: *First,* They shall establish a sufficient number of free schools for the education and instruction of every individual resident within their district, between the ages of six and twenty-one years, who may apply for admission and instruction, either in person or by parent, guardian or next friend. *Second,* They shall cause suitable lots of ground to be procured and suitable buildings to be erected, purchased or rented, for school houses, and shall supply them with the proper fuel, and with such furniture and fixtures as are necessary to the comfort, health, good order and progress of the pupils. *Third,* They shall have the appointment

Management of district schools.

Establishment of schools.

School houses.

Teachers and their salaries.

of all the teachers of the public schools within their district, shall fix the amount of teachers' salaries, and may dismiss them at any time for incompetency, cruelty, negligence or immmorality. *Fourth*, They shall direct what branches of learning, in addition to those prescribed in the sixth section of this act, shall be taught in each school, and what class books shall be used within their district, and may suspend or expel from any school any pupil found guilty, on full examination and hearing, of refractory or incorrigibly bad conduct. *Fifth*, They shall visit all the schools of their district once within two weeks after the opening, and again within two weeks preceding the close of each school, and at such other periods during the term as in their opinion the exigencies of each school may require; at which visits they shall examine the register of the teacher and see that it is properly kept, and other matters touching the school house, furniture, fixtures, library, studies, discipline, mode of teaching and improvement of the school; shall confer with the teacher in regard to its condition and management, and make such suggestions as in their view would promote the interest and efficiency of the school, and the progress and good order of the pupils. The results of such visitation they shall cause to be entered on their minutes. *Sixth*, They shall pay all necessary expenses of the schools by drafts upon the township treasurer or other proper dicbursing officer, of the funds raised within each district for school purposes, which drafts shall be signed by the clerk of the township as secretary of the board, and an account of the same shall be entered by him in a book to be kept for the purpose. *Seventh*, They shall annually, on or before the first day of June in each year, make a report to the county superintendent, setting forth the number of schools within their districts; the number and condition of their school houses; the number of scholars in attendance during the year, distinguishing between males and females; the average of daily attendance; the length of time the schools have been kept open during the year; the amount of tax levied and collected for school purposes within their district during the year; the number of teachers employed, distinguishing between male and female; the averages of each per month, including board; the amount expended for building, repairing and furnishing school houses; the amount and value of apparatus and libraries belonging to their district for the use of the schools; and such other information as may be necessary and beneficial, in order to form a just estimate of the operation of the school system. *Eighth*, It shall be the duty of the board of education to make settlement with the township treasurer at their regular session in April, annually; but if from want of time or other reason a settlement cannot be made in that month, then it shall be the duty of the board to appoint a committee composed of one or more of ther members to make such settlement as soon as practicable; and the result shall be reported to the clerk, and an abstract recorded in the records of the board.

Branches taught; books used; expulsion of pupils.

Visits of board to schools.

Payment of expenses of schools

Annual report by board to county superintendent.

Settlements with township treasurer.

8. Whenever it shall happen that persons are so situated as to be better accommodated at the school of an adjoining township, whether in the same or an adjoining county, or whenever it may be desirable

Transfer of pupils from one district to another.

to establish a school composed of parts of two or more townships, it shall be the duty of the respective boards of the townships in which such persons reside, or in which such schools may be situated, or of the townships or parts of which the school is to be composed, to transfer such persons for school purposes to the township in which such school house is or may be located; but the enumeration of scholars shall be taken in each township as if no such transfer had been made; and such school, when so composed, shall be supported from the funds of the respective townships from which the scholars may have been transferred; and the board of that township in which the school house is situated, shall have the control and management of such school; and the boards of the adjoining township or townships so connected for school purposes, shall each make the proper estimates of their share of expenses of every kind necessary to sustain said school, and certify the same to the county superintendent as part of their annual estimates for school purposes, and draw orders on their respective township treasurers for such sum as will be in proportion to the enumeration of scholars so transferred in favor of that township in which such school is located, to be appropriated to the payment of teachers and for other purposes connected with the establishment or maintenance of such school.

Collection of accounts against township boards of education.

9. When any judgment shall be obtained against any township board of education, it shall be the duty of the county superintendent to assess the amount of such judgment with interest and costs upon the taxable property of their township; which account shall be collected and paid out in the same manner as other school taxes, upon the order of the clerk of said board upon the township treasury, to satisfy the judgment aforesaid.

High schools—how established.

10. Whenever, in the opinion of the board, the interests of education within their district require that a central or union school of higher grade be established, the said board shall call a township meeting, by giving at least ten days notice, by written or printed advertisements, posted in at least five of the most public places within their district, specifying the time, place and object of the meeting, which meeting, when convened, shall be organized and conducted as provided for the annual township meetings; and when so organized, the board of education shall submit the proposition for the establishment of such school, with the reasons for the same, together with a carefully prepared estimate of the cost; and if, after full deliberation and discussion, two-thirds of the qualified voters present and voting, shall decide in favor of the proposition, such school shall be established, and the estimated additional cost shall be added to the next annual assessment for school purposes within the district; and the board of education shall proceed to put such school into operation.

For whose benefit, and how kept.

11. Such school, when established, shall be for the benefit of all the inhabitants of the district, and shall be kept by a competent teacher or teachers of good moral character, who, in addition to the branches of learning prescribed for the primary schools, shall be capable of

giving instruction in book-keeping, algebra, geometry and surveying, with such other branches pertaining to the natural sciences and general literature, as the board of education may determine.

Functions of boards of education respecting high schools.

12. In regard to such union schools, the several boards of education shall be invested with the same powers and perform the same duties, as in reference to the primary schools, so far as these are applicable. They shall determine the ages and qualifications of the scholars to be admitted into them, and the length of time they are to be kept in operation during the year, and shall report separately to the county superintendent all such facts in regard thereto, as will be necessary to form a just estimate of the state of education within their district.

Condition precedent to distribution of state school fund.

13. No school district shall receive its share of the state fund for the support of free schools, unless the report required to be made by the board of education thereof shall first have been filed in the office of the county superintendent, within the time prescribed by law.

Qualifications of teachers.

14. No teacher shall be employed to teach in any of the public schools of this state, until he shall have presented to the board of education of the district in which he applies a certificate, in duplicate, of his qualification to teach a school of the grade for which he applies; the duplicate copy of which shall be filed with the clerk of the township, and no salary shall be paid to any teacher unless such duplicate be filed as aforesaid.

School registers.

15. It shall be the duty of every teacher to keep a daily register of his school, in manner and form as prescribed by the state superintendent, blank forms of which register shall be furnished to every teacher by the board of education of the district at the commencement of his term, and at the close thereof shall be deposited in the office of the township clerk, properly filled according to the instructions accompanying the same from the state superintendent, as a condition precedent to his receiving his salary.

General duty of teachers.

16. It shall be the duty of all teachers employed in any of the public schools of this state to inculcate the duties of piety, morality and respect for the laws and government of their country; and all teachers, boards of education, and all other school officers created by this act, are hereby charged with the duty of providing that moral training for the youth of this state, which shall contribute to securing good behavior and virtuous conduct, and to furnishing the state with exemplary citizens.

Schools for colored children.

17. The township boards of education in their respective townships shall be, and they are hereby authorized and required to establish within their respective jurisdictions, one or more separate schools for free colored children, when the whole number by enumeration exceeds thirty, so as to afford them as far as practicable, under all the circumstances, the advantages and privileges of a free school education; and all such schools so established shall be under the management and control of the board of education; but in case the average attendance of free colored children shall be less than fifteen for any one month, it shall be the duty of said board or other school officers

to discontinue said school or schools for any period not exceeding six months at any one time, and if the number of free colored children shall be less than fifteen in attendance, or not exceeding thirty by enumeration, the directors shall reserve the money raised on the number of free colored children, and the money so reserved shall be appropriated for the education of such colored children in such a way as the township board shall think best.

County superintendent.

18. On the same day of the election of township officers, next ensuing, and every two years thereafter, on the day of said election, the voters of each county shall elect a county superintendent of free schools, whose term of office shall be for two years, to commence on the tenth day succeeding said election; and he shall continue in office until his successor is elected and qualified. He shall, before entering upon the duties of his office, execute a bond before the recorder of his county, in the sum of five hundred dollars, with approved security; upon which bond he shall be liable in any court having jurisdiction, to any person or persons, or to any township board of education, for losses sustained by reason of his neglect or non-performance of duties imposed by this act. Said bond shall be filed in the office of the recorder; who shall, within five days, certify to the general superintendent of free schools, the name of said county superintendent and his post office address.

His bond.

His liability to removal.

19. The county superintendent shall be liable to removal by the board of supervisors for any palpable violation of law or omission of duty. But no such superintendent shall be removed for such violation of law or omission of duty, unless charges thereof shall be preferred to the board of supervisors, and a notice of the hearing, with a copy of the charges delivered to such superintendent, and an opportunity given him to be heard in his defense. And when the office of county superintendent shall become vacant from any cause, the said board of supervisors shall fill the same, by appointment, for the unexpired term; and the person so appointed shall give the requisite bond and hold his office until his successor shall be qualified.

Vacancies.

Duties of county superintendent.

20. The county superintendent shall examine all candidates for the profession of teacher, as to their competency and capacity to teach orthography, reading, writing, arithmetic, English grammar and geography, if the application is for a primary school; and if the application is for a union or central school, he shall examine the applicant as to his competency and capacity to teach the additional branches required for such school; and if satisfied of the competency and capacity of the applicant to teach and govern such school, and that he or she is of good moral character, he shall give a certificate, in duplicate, accordingly. The county superintendent shall keep a register of all those to whom certificates have been awarded, stating the character and grade of certificate, and the time when issued. No certificate issued by a county superintendent shall be of force except in the county in which it was issued, nor for a longer period than one year; and the county superintendent may revoke the certificate of any teacher within the county, for any cause which would have justified

the withholding thereof, when the same was granted, by giving ten days notice to the teacher and the board of education by whom he is employed, of his intention to revoke such certificate.

Duties of county superintendent.

21. It shall be the duty of the county superintendent to visit all the schools within his county, at least three times during every term of six months, and to note the course and method of instruction, and the branches taught, and to give such directions in the art of teaching and the method thereof, in each school, as to him shall seem necessary and expedient, so that uniformity in the course of studies, and methods of instruction employed, shall be secured as far as practicable in the schools of the several grades respectively. He shall acquaint himself, so far as practicable, with the character and condition of each school, noting any deficiencies that may exist, either in the government of the school, the classification of its pupils, or the method of instruction employed in the several branches, and shall make such suggestions, in private, to the teachers, as to him shall appear to be necessary to the good order of the school and progress of the pupils. He shall note the character and condition of the school houses, the sufficiency or insufficiency of their furniture and fixtures; and shall make such suggestions to the several township boards of education as in his opinion shall seem conducive to the comfort and progress of the pupils of the several schools.

Duties of county superintendent.

22. It shall be the duty of the county superintendent to aid the teachers in all proper efforts to improve themselves in their profession. For this purpose he shall encourage the formation of county associations of teachers for mutual improvement; shall attend the meetings of such associations whenever practicable, and give such advice and instruction in regard to their conduct and management, as in his judgment, will contribute to their greater efficiency. In connection with the superintendents of adjoining counties, each county superintendent shall encourage the formation of teachers' institutes; shall attend and participate in the exercises of the same, so far as practicable; and shall use all proper means to improve the efficiency of the teachers and to elevate their profession. He shall use all proper means to create and foster among the people an interest in free schools, and for this purpose, shall, as far as practicable, take advantage of such public occasions as may present themselves, as the dedication of school houses, public examinations, &c., to impress upon the people the importance of public education, and the duty of sustaining the system of free schools as established by law. He shall at all times, conform to the instructions of the state superintendent, as to all matters within the jurisdiction of the said superintendent; and shall serve as the organ of communication between him and the several township boards of education. He shall distribute from his office, all blanks, circulars, copies of school laws, and other communications from the state superintendent, to the several boards and persons entitled to receive the same.

Duties of county superintendent.

23. It shall be the duty of the county superintendent to secure, as far practicable, uniformity in the text books used in the schools

throughout his county; but no county superintendent shall act as agent for any author, publisher or book-seller; nor shall directly or indirectly receive any gift, emolument or reward for his influence in recommending the use of any book or school apparatus or furniture of any kind whatever. Any act herein prohibited, shall be deemed a violation of his official oath; and any offer or solicitation to such an act, shall be considered an attempt to bribe and corrupt a public officer.

Duties of county superintendent.

24. It shall be the duty of the several county superintendents to receive and revise the reports from the several township boards, and to see that they are in proper form and according to the intent and spirit of the law, and where deficiencies exist to return them for correction. It shall be their duty to make out from these reports and from their own information, a report for each county in tabular form to the state superintendent, setting forth, under appropriate heads, the following items, viz: The number of schools in each district; the average number of months the schools have been taught during the year; the number of male teachers; the number of female teachers; the average salary per month of male teachers; the average salary per month of female teachers: whole number of youth within each district between the ages of six and twenty-one years; the number entered in the schools of the district; the average daily attendance; amount levied within each district for the support of schools; amount levied for building purposes; amount received from state appropriation; cost of construction; fuel and contingencies; and amount expended for purchasing, renting, repairing and furnishing school houses. In addition to this report, it shall be the duty of the county superintendent to make out and transmit to the state superintendent a detailed report of the condition and character of the schools within his county, noting all deficiencies and suggesting their remedies, with such remarks upon the operation of the school laws as his experience and observation may have suggested, pointing out wherein he regards them as deficient, and what amendments may be required to render them efficient. He shall also report such townships in which the boards of education have failed to make return of the enumeration of youth as required in the sixth section of this act.

Compensation of county superintendent.

25. It shall be the duty of the board of supervisors for each county to make such allowance, not less than one hundred nor more than five hundred dollars, out of the school fund, adjusted to the amount of labor performed, in payment for his services, to each county superintendent, as justice and right may require.

State superintendent—how elected and term of.

26. The state superintendent shall be elected by a joint vote of both branches of the legislature. He shall hold his office for the term of two years and until his successor is qualified. The first election shall be at the session of the legislature convening on the third Tuesday of January, eighteen hundred and sixty-four. The state superintendent first elected shall hold his office, commencing on the first day of June next, for the unexpired term ending on the third day of March, eighteen hundred and sixty-five. When a vacancy may occur in said office

Vacancies.

by death, resignation, or otherwise, the governor shall fill the same by appointment for the unexpired term.

Bond of state superintendent.

27. Before entering upon the discharge of his official duties, the said state superintendent shall give bond in the sum of three thousand dollars, with good security; which bond, with the certificate of his oath endorsed thereon, made and taken before the secretary of the state, shall be filed in the office of the treasurer of the state.

Duties of state superintendent.

28. The state superintendent shall be charged with the general supervision of all county superintendents and all the free schools of the state; and shall see that the school system is, as early as practicable, carried into effect and put in uniform operation. He shall prescribe and cause to be prepared all forms and blanks necessary in the details of the system so as to secure its uniform operation throughout the state; and shall cause the same to be forwarded to the several county superintendents, to be by them distributed to the several persons entitled to receive the same. He shall decide upon a written statement of the facts, all questions and controversies arising out of the interpretation and construction of the school laws in regard to the rights, powers and duties of township boards of education, school commissioners and county superintendents, and shall keep a record of all such decisions. He shall cause as many copies of this act and all other school acts in force, with the above decisions appended thereto, with such forms, regulations and instructions as he may judge expedient, thereto annexed, to be from time to time published, as he may deem expedient; and shall cause the same to be forwarded to the county superintendents, to be by them distributed to the persons entitled to receive them.

Duties of state superintendent.

29. He shall, at the time and place to be appointed by him, convene the county superintendents within each judicial circuit of the state once in each year, for the purpose of conference upon the interests of education within their several jurisdictions, and giving such instructions and making such suggestions in regard to the discharge of their several duties as to him may seem expedient, and as the interests of education may seem to require. He shall take advantage of such meetings to address the people on the subject of education, and in exposition of the system of free schools as established in this state.

Duties of state superintendent.

30. It shall be the duty of the state superintendent to aim at perfecting the system of free schools as established in this state; and for this purpose it shall be his duty to correspond with educators and school officers abroad, to acquaint himself with the various systems of free schools established in other states and in other countries, to collate their results as exhibited in the reports of their several superintendents, and to use all efforts and means which will be necessary to enable him to render available to the purposes of the legislature, the combined results of the experience of other communities, with his own experience and observation. He shall acquaint himself intimately with the peculiar educational wants of each section of the state, and shall take all proper means to supply them, so that the schools shall

be, as nearly as possible, equal and uniform in grade throughout the state. He shall acquaint himself with the different systems and methods of instruction which may be introduced among educators, and shall explain and recommend such as experience and sound principles of education may have demonstrated to be valuable; and, generally, it shall be his duty to endeavor to render available to the people of this state all such improvements in the system of free schools, and in the methods of instruction, as may have been tested and proved by the experience of other communities and the best educators abroad.

Duties of state superintendent.

31. He shall, annually, on or before the first day of August, report to the auditor the number of persons between the ages of six and twenty-one years in each county in the state, also a report of all township boards which have failed to make the enumeration required in the sixth section of this act; and shall, at each session of the legislature, make a report to the same in regard to the condition of free schools within the state, embracing all statistics compiled from the reports of the county superintendents, which will be necessary to give a proper exhibition of the workings of the system, together with such plans as he may have matured for the management and improvement of the free school fund, and for the better and more perfect organization and efficiency of free schools, and likewise all such matters in relation to his office and to the free schools as he may deem it expedient to communicate.

Office of state superintendent.

32. The state superintendent shall have his office at the seat of government, where a suitable office shall be provided for him, supplied with the necessary furniture and fixtures, and provided with such blank books and stationery as the business of the office may require.

Seal for the department of free schools.

33. He shall provide a seal with suitable device, for the department of free schools, and copies of papers deposited or filed therein, and all official acts and decisions, may be authenticated under said seal, and when so authenticated, shall be evidence equally and in like manner with the originals. He shall sign all requisitions on the auditor for the payment of such money to the treasurers of the several counties for the use of the free schools as they may be entitled to receive from the state, and for all other money to be paid out of the treasury of the state for school purposes.

Disbursement of state school fund

Salary of state superintendent.

34. He shall receive annually, the sum of one thousand five hundred dollars in payment of his services, to be paid quarterly out of the school fund, upon the warrant of the auditor.

Examination of teachers and granting of certificates.

35. In order to afford encouragement and incentive to teachers to perfect themselves in their profession, and at the same time to secure the profession from the intrusion of unworthy members and the public from the evils of incompetent teachers, the following regulations shall be observed by county superintendents in regard to examinations and the granting of teachers' certificates: *First,* No applicant shall be admitted to an examination unless the county superintendent shall have reasonable evidence that he or she is of good moral character, and loyal to the government of the United States. Profanity, obscen-

Good moral character and loyalty required.

ity and intemperate habits, shall always be held to exclude from the privilege of an examination. *Second,* No college diploma or certificate, or recommendation from the president or faculty of any college or academy, shall be taken to supersede the necessity of examination by the county superintendent. *Third,* County superintendents shall grade the certificates granted according to the following scheme numbering them according to the merits of the applicant from one to five. Number three shall be assumed as the medium between a very good and an indifferent teacher, so that the scheme will stand thus: Number one a very good teacher—one accomplished in every respect; number two, a good teacher; number three, medium; number four, below medium; number five, indifferent. A number five certificate shall never be granted to any teacher more than once. If, upon a second examination, the applicant is not found entitled to a higher grade, no certificate shall be granted. A number four certificate shall not be granted more than twice in succession to the same applicant. If, at the third examination, the applicant is not found entitled to a higher grade, no certificate shall be granted. When any teacher has received three number one certificates, he shall be entitled to receive from the county superintendent a recommendation to the state superintendent for examination, and if found worthy, the state superintendent shall grant him a professional certificate in proper form, engraved upon parchment, authenticated by the seal of his office and attested by his signature thereto; by which certificate the bearer shall be held to be legally admitted to the profession of teacher within the state of West Virginia; which certificate shall be valid throughout the state and during the life of the bearer thereof; provided, that the state superintendent may revoke such professional certificate for immorality or disloyalty when clearly proven. For every professional certificate so granted, a fee of three dollars shall be charged, to be applied to the use of free schools. And it is further provided, that from and after five years from the passage of this act, no person shall be eligible to the office of county superintendent who shall not have received such professional certificate. And it is hereby made the duty of each county superintendent, on or before the first day of June in each year, to make out and transmit to the state superintendents a list of all candidates examined by him during the year, stating their names and residence, with the grade of certificate granted to each; from which the state superintendent shall make out and transmit to the county superintendents a general list containing the names, residence and grade of certificate of each person examined within the state during the year; which lists shall be kept in the offices of the county superintendents for information and reference.

Diplomas, &c., disregarded.

Grading of certificates by county superintendents.

Examination and certificate by state superintendent.

Fee therefor.

Such certificate a condition of eligibility as county superintendent.

Lists of certificates.

36. There shall be constituted a fund for the support of free schools, which shall belong in common to the people of this state, and which shall consist of all such sums as have accrued or may hereafter accrue to this state from any of the sources enumerated in the first section of the tenth article of the constitution; and it is hereby made the duty of the auditor, from and after the passage of this act, and from time to time thereafter, as such sums may accrue to and be paid into the

General school fund.

Duty of auditor respecting.

treasury of the state, to pass such sums of money to the credit of the free school fund; and the state of West Virginia is hereby pledged to pay the interest annually on all such sums of money as may have been paid into the treasury of the state, from any of the sources above mentioned, at the rate of six per cent per annum. And it is further made the duty of the said auditor, to open in a book to be provided for the purpose, an interest account with the said fund, in which shall be stated all items of interest accruing from said fund from the time any principal sum was paid into the treasury, until the end of the fiscal year; which interest shall be distributed among the several counties of this state for the support of free schools as hereinafter provided. And it is further made the duty of the said auditor, as soon as a state superintendent is elected and qualified, according to the provisions of this act, to ascertain and report to the said superintendent all sums belonging to the literary fund of Virginia which may have been invested within the boundaries of this state, whether loaned to corporations or private individuals, or invested in any kind of stocks, and what interest or dividends may have accrued thereon to the credit of the literary fund since the first day of June, eighteen hundred and sixty-one, and how the same has been disposed of.

School fund for distribution.

37. In addition to the interest of the free school fund, there shall likewise be distributed, according to the second section of the tenth article of the constitution, and in the manner herein provided, the net proceeds of all fines, confiscations and forfeitures accruing to this state under the laws thereof; together with the proceeds of a capitation tax of one dollar on each white and free colored male inhabitant over twenty-one years of age, and such sum as may be produced by a tax of ten cents upon the hundred dollars' valuation of all taxable property of the state at the last annual assessment; which tax shall be assessed and collected at the same time and in the same manner as other state taxes are assessed and collected. And the officer collecting such tax shall be allowed a commission thereon, at the same rate per cent as may be allowed by law for the collection of other state taxes; which taxes, when so collected, shall be paid into the treasury of the state, to be distributed annually with other school funds herein described to the several counties of the state in proportion to their enumeration of scholars.

Collection of school tax on property.

Commission of collector.

38. It shall be the duty of the auditor, on or before the first day of April, in each year, after deducting the salary of the state superintendent and all the necessary expenses of his office, to apportion among the several counties of the state, the money remaining in the treasury for distribution for school purposes, according to the number of youth resident in each county of the state, between the ages of six and twenty-one years, according to the list furnished him by the state superintendent, and to notify the said superintendent of such apportionment, with the amount which each county is entitled to receive. The said superintendent shall thereupon draw his requisitions upon the auditor in favor of the treasurers of the several counties, for such amounts as they are respectively entitled to receive, according to the

Apportionment of school fund by auditor.

Duties of township superintendents respecting.

apportionment of the auditor, and shall at the same time notify the several county superintendents of the amounts to which their several counties are entitled. And each county superintendent upon receiving notification of the amount to which his county is entitled, shall, after deducting the amount of his own salary, apportion the remainder among the several townships of his county entitled thereto, according to the number of youth resident within the same, between the ages of six and twenty-one years, and shall notify the several township clerks of the amount appropriated to their respective townships.

Township levies for school purposes.

39. It shall be the duty of the board of education of each township of the state to submit to a meeting of the qualified voters of their township, at the regular annual township meeting, an estimate, as near as practicable, of the amount of money necessary for the purpose of prolonging the schools in the districts after the state funds have been exhausted, so that free schools shall be continued in every district for the term of six months, at least, in each year; and said meeting shall proceed to assess the amount of tax to be levied for such purpose, not exceeding ten cents upon the hundred dollars valuation as aforesaid. The minutes of the meeting shall be recorded and preserved in the record book of the township board of education. And the rate per cent so decided upon the board shall make known by certificate in writing, within ten days, including any tax which may have been voted by a special meeting, for the establishment of high schools, as provided in the tenth section, to the county superintendent, who shall levy the entire amount of such assessment on all the taxable property of the township; and such taxes so levied for school purposes, may be paid to the township treasurer on or before the first day of October next after said levy has been made. If not paid at that time, the township treasurer shall place tickets for said taxes, with ten per cent added thereto, in the hands of a collecting officer for the township, taking his receipt therefor, who shall collect and pay said taxes to the treasurer as other township taxes are collected and paid. Said collecting officer shall receive for his services ten per cent upon all money by him so collected.

Commissions for collecting same.

Township treasurer.

His bond.

Duties of township clerk respecting same.

40. The township treasurer shall be the treasurer of all school funds belonging to the township, arising from whatever sources, and before entering upon the duties imposed by this act, he shall give bond with security, approved by the board of education for the township, in double the probable amount of money that shall come into his hands; and said bond shall be filed with the clerk of the township; and on the forfeiture of such bond, it shall be the duty of the township clerk to prosecute and collect the same for the use of free schools in the township, and if such township clerk shall neglect or refuse to so prosecute, then any freeholder may cause such prosecution to be instituted.

Restrictions on treasurer by county superintendent.

41. The county superintendent shall issue to the township treasurer an order for the payment to him of any school funds belonging to the township, but before said order shall issue, such treasurer shall

furnish the superintendent with a certificate from the township clerk that said treasurer has executed and filed with him a proper bond, and also stating the amount of said bond; and the county superintendent shall not permit the said treasurer to have in his hands, at any one time, an amount of school funds over one-half the amount of the penalty in such bond; and the township board of education shall allow the township treasurer a compensation equal to one per cent. on all school funds disbursed by him, to be paid on the order of the township clerk out of the said school funds.

Treasurer's annual settlement.

42. The township treasurer shall, annually, between the first and fifteenth days of May, settle with the county superintendent and account to him for all money received, from whom, and on what account, and the amount paid out for school purposes in his township. The county superintendent shall examine the vouchers for such payments, and, if satisfied with the correctness thereof, shall certify the same; which certificate shall be a discharge of such treasurer; and at the expiration of his term of service, said treasurer shall deliver over to his successor in office all books and papers, with all money or other property in his hands belonging to said township or to schools therein, and also all orders he may have redeemed since his last annual settlement with the county superintendent and take receipt therefor, which he shall deposit with the township clerk within ten days thereafter.

Delivery of books and papers at expiration of his term.

Failure of treasurer to make annual settlement.

43. In case the township treasurer shall fail to make such annual settlement within the time prescribed in the preceding section, he shall forfeit fifty dollars, to be recovered before any court having jurisdiction, in the name of the state of West Virginia, for the use of free schools in the proper township; and it is made the duty of the township clerk to proceed forthwith, in case of such failure, by suit against such treasurer to recover the penalty aforesaid; but when it shall appear on trial, to the satisfaction of the court, that said treasurer was prevented from making such settlement within the time prescribed, by sickness or unavoidable absence from home, and that such settlement has since been actually made, the court shall discharge such treasurer on the payment of costs.

School houses and school house sites.

44. It shall be the duty of the several township boards of education, so soon as practicable, after their township has been sub-divided as provided in the sixth section of this act, to provide school houses in such locations as will best accomodate the majority of the inhabitants of such sub-divisions, and to furnish them with such furniture and other appendages as are necessary to the comfort, health and progress of the pupils; and for this purpose they are hereby empowered to levy a tax of five cents on the hundred dollars, on the taxable property of the district; which tax shall be assessed by the township clerk, upon the basis of the last valuation for state purposes; and a duplicate of such assessment shall be delivered to such collector as may be appointed by the board; and when collected shall be paid over to such treasurer as the board, under proper regulations looking to the security of the fund, may appoint; and the amounts so collected and paid over, together with all gifts, grants, donations and devises, which may

Tax by districts to provide same.

Building fund.

be made for such purpose, shall constitute a building fund to be exclusively appropriated to the purchase of sites for school houses, the construction and furnishing of the same, or for the rent, hire or repair of such property for the use of the free schools of the district.

Houses and sites in present use.

45. Wherever school houses, school house sites or other property, are now held by trustees or others for the use of schools, the board of education of the township in which such property is held shall procure conveyance of the same for the use of free schools wherever practicable, and shall cause all such property to be valued by three disinterested persons not resident within the sub-division in which such property is located; and the amount of such valuation shall be credited to the inhabitants of the sub-division in which such property is located, on their annual assessment for building purposes.

Examination of same.

46. It shall be the duty of the boards of education within the several townships, as soon as practicable, after the passage of this act, and on a day to be appointed by the county superintendent, to examine, in connection with the county superintendent, all the school houses and school property within their district, and of which they may have received conveyance; and all such school houses as are conveniently and properly located, and are deemed sufficient or capable of being rendered so by repair or alteration of structure, shall be established as the school houses of the respective sub-divisions within which they are located; and all houses which are inconveniently or improperly located, or insufficient and incapable of being rendered sufficient by a reasonable expenditure, shall be condemned and sold at public sale, the proceeds thereof being added to the building fund.

Duty of county superintendent respecting school houses.

47. No new school house shall be erected, or an old one improved, unless the plan thereof shall have been submitted to the county superintendent and approved by him; and it is hereby made the duty of the county superintendent to acquaint himself with the principles of school house architecture, and in all his plans for such structures to have regard to economy, convenience and durability of structure. And in order to aid the county superintendents in this branch of their duties, it is hereby made the duty of the state superintendent to furnish, at the expense of the school fund, the office of each county superintendent within the state with one copy of "Barnard's School House Architecture," or such other standard work upon the subject as he may prefer; such work to be kept in the office of the county superintendent for consultation and reference, to be delivered by him to his successor.

Authority of boards of education to borrow money for building.

48. The boards of education of the several townships may borrow money for building purposes upon the credit of the building fund, but no greater amount of money shall be borrowed at any one time than the proceeds of the fund for five years would be sufficient to liquidate, nor shall the building fund of any township be pledged for any debt for a longer period than five years.

Condemnation of land for school house sites.

49. When land has been designated by the board of education of any township as a suitable location for a school house and the neces-

sary buildings, or for the enlarging of a school house lot, if the owner or owners refuse to sell the same, or demand a price therefor which is deemed by the board unreasonable, the board of education may petition the circuit court of their county to have such lot of ground condemned for the use of public schools, and to have a jury of viewers appointed, to consist of three discreet persons not resident within the township within which such land is located, who, being duly sworn or affirmed faithfully and impartially to try all matters submitted to them, shall assess the value of such land, and upon due return being made of such assessment, and the amount thereof being paid or tendered to the owner or owners of the land in question, the said board may enter thereon and use such land for school house purposes: provided, that no land shall be taken which shall exceed in quantity one acre.

School property exempted from taxation and execution.

50. All school houses, school house sites and other property for the use of free schools, shall be exempt from taxation, and also from sale on execution, or other process in the nature of an execution.

School year and month.

51. The school year shall commence on the first day of September, and all reports, settlements, and-so-forth, shall be made in reference to that day. The school month shall be held to consist of twenty-two days in all contracts with teachers, and other operations of the boards of education; and no school shall be kept in operation for the purposes of ordinary instruction on any Saturday; but it shall be taken as a part of the contract with every teacher, that two Saturdays of every month shall be devoted by the teachers of each district to appropriate exercises for mutual improvement, under such regulations as the board of education, under the instructions of the county superintendent, may designate.

Board of education for the district of Wheeling.

52. The board of education of the district composed of the city of Wheeling and the parts of townships connected therewith, shall consist of two commissioners from each township of the district, elected by the qualified voters thereof at the annual township election, for the term of three years and until their successors are elected and qualified; which commissioners, when elected and qualified, shall at their first meeting elect an additional commissioner from the district at large; and the commissioners so elected shall constitute the board of education for the district of Wheeling, and as such shall be invested with the same rights, and shall exercise the same powers and perform the same duties, as appertain by this act to the boards of education of the several townships, and shall in all other respects conform to the provisions of this act. The said board shall at their first meeting elect one of their own number clerk, who shall perform all the duties which are devolved by this act upon the clerk of the township as secretary of the board of education, but shall not, in consequence of being clerk, be deprived of his right to vote upon any question pending before the board. The said board shall have power to make such by-laws and regulations, not inconsistent with the provisions of this act, as they may deem necessary for the better management and regulation of the schools under their charge. Wherever the word "township" occurs in this act, it shall be construed to mean "school district," when-

How constituted.

Their clerk and treasurer.

ever necessary to give effect to the provisions of this section. The treasurer of Ohio county shall be the treasurer of all the funds for school purposes belonging to the district described in this section; and he shall conform to all the requirements made of township treasurers in regard to funds for school purposes.

Board of school fund.

53. The governor, auditor, treasurer, secretary of the state, and the general superintendent of free schools, shall be a corporation under the name of "The board of the school fund," and shall have the management, control and investment of said fund, under the first section of the tenth article of the constitution.

Officers of same.

54. The governor shall be the president of the board, and in his absence the board may choose one of their number to officiate temporarily in his place. The auditor shall be the secretary of the board. A faithful record shall be kept of all their proceedings, and a copy thereof, certified by the secretary of the board, shall be evidence in all cases in which the original would be.

Meetings and proceedings of same.

55. A meeting of the board may be held at any time, upon the call of any member thereof, provided notice be given to all the members who may be at the seat of government. The auditor's office shall be the place of meeting, and the proceedings shall be signed by the president of the meeting for that day, and shall be open to inspection at all times.

Recovery of money due school fund.

56. All money which ought to be paid into the treasury to the credit of the school fund shall be recoverable with interest, by action or motion, in any court having jurisdiction; and the auditor shall institute and prosecute said action or motion when thereto directed by the board.

Appointment of agents by board of the school fund.

57. The board may appoint agents for the collection of debts or claims, and authorize them to secure payment thereof, and protect the interests of the school fund, on such terms as it may approve. They shall take bond from said agent if any money is to come into his hands; and any agent selling lands when directed to do so by the board, shall execute a deed (with the resolution giving such direction thereto annexed,) conveying to the purchaser by special warranty. Said agent may be allowed by the board a compensation not exceeding in any case five per cent on the money actually paid into the treasury.

Investment of school fund.

58. The board shall from time to time invest all the uninvested capital and interest of the school fund in interest-bearing securities of the United States or of this state, as provided for in the constitution.

Duties of auditor as member of the board.

59. The auditor shall be the accountant of the board, exercising any of their powers, except that he shall not, without special authority entered upon the records of their proceedings, dispose of any property, or invest any money of the school fund. He shall place the securities in which said school fund is invested, in such depository for safe keeping, as the board shall direct.

60. The auditor shall, annually, before the first day of November, deliver to the governor and to the general superintendent of free schools, each, a report made up to the first day of October next preceding, of the condition of the school fund, with an abstract of the accounts thereof in his office; which report the general superintendent shall lay before the legislature in his next annual report to that body.

His annual report on the school fund;

61. All money belonging to the school fund shall be received into and paid out of the treasury, upon the warrant of the auditor. But no warrant for paying out such money shall be issued without the authority of the board.

Payment into treasury and disbursement of school money.

62. All acts and laws heretofore existing in this state, in any way inconsistent with the provisions of this act, are hereby repealed.

Laws repealed.

JOINT RESOLUTIONS.

[No. 1.] Joint Resolution declaring the election of certain Officers.

Resolved by the Legislature of West Virginia, That Arthur I. Boreman be, and he is hereby declared duly elected to the office of governor of this state; J. Edgar Boyers to the office of secretary of the state; Campbell Tarr to the office of treasurer; Samuel Crane to the office of auditor; Aquilla B. Caldwell to the office of attorney general; Ralph L. Berkshire, William A. Harrison and James H. Brown, respectively, to the office of judge of the supreme court of appeals; Elbert H. Caldwell to the office of judge of the first circuit; John A. Dille to the office of judge of the second circuit; Thomas W. Harrison to the office of judge of the third circuit; Chapman J. Stuart to the office of judge of the fourth circuit; Robert Irvine to the office of judge of the fifth circuit; George Loomis to the office of judge of the sixth circuit; Daniel Polsley to the office of judge of the seventh circuit; Henry Jefferson Samuels to the office of judge of the eighth circuit; and John W Kennedy to the office of judge of the tenth circuit; and that provision should be made by law for filling, as speedily as possible, the vacancy which appears to exist in the office of judge of the ninth circuit.

Adopted, June 20, 1863.

[No. 2.] Joint Resolution raising a Committee on Seals.

Resolved by the Legislature of West Virginia, That a committee be appointed to devise and report suitable devices and inscriptions for the seals of the state, and report the same to the legislature; and that until such seals are adopted and ready for use, the governor be authorized to affix his private seal to all instruments otherwise requiring the seal of the state.

Adopted, June 23, 1863.

[No. 3.] Joint Resolution requesting the Governor to procure the Statutes of other States.

Resolved by the Legislature of West Virginia, That his excellency Governor Boreman, be requested to address a letter to the governors of the several loyal states, asking them to furnish for the use of the state of West Virginia, a copy of the statutes of their several states.

Adopted, June 24, 1863.

[No. 4.] Joint Resolution referring a Communication from the Auditor.

Resolved by the Legislature of West Virginia, That the communication of the auditor be referred to the governor, with authority to take such steps in the premises as he may deem proper.

Adopted, June 25, 1863.

[No. 5.] Joint Resolution fixing a day for the Election of Public Printer.

Resolved by the Legislature of West Virginia, That the two Houses proceed on Wednesday, July first, to the election of a public printer.

ADOPTED, June 30, 1863.

[No. 6.] Joint Resolution providing for a Recess.

Resolved by the Legislature of West Virginia, That when it adjourn to-day, it will adjourn to meet on Tuesday next.

ADOPTED, July 2, 1863.

[No. 7.] Joint Resolution raising a Committee to examine the Lunatic Asylum at Weston.

Resolved by the Legislature of West Virginia, That a committee of two from the House and one from the Senate, shall be appointed to inquire into and report the progress made in the construction of the lunatic asylum at Weston; how soon the same or any part thereof will be ready for use or occupancy; the character of the work done; the amount already expended in the construction of said asylum; what balance (if any) of the appropriation heretofore made is unexpended; and that the said committee also ascertain and report whether a portion of said building can be fitted up for a temporary penitentiary, without detriment to the building in view of its original purpose. If the committee cannot otherwise procure the information desired, it is hereby instructed to go to Weston and inspect said work, and examine the accounts of vouchers of expenditures.

ADOPTED, July 17, 1863.

[No. 8.] Joint Resolution fixing a day for the election of United States Senators.

Resolved by the Legislature of West Virginia, That it will proceed, on Tuesday, the fourth day of August, eighteen hundred and sixty-three, at eleven o'clock, A. M., to the election of two United States senators for the state of West Virginia.

ADOPTED, July 20, 1863.

[No. 9.] Joint Resolution raising a Committee to procure in settlement the Money appropriated to this State by Act of the General Assembly of Virginia.

Resolved by the Legislature of West Virginia, That a joint committee be appointed, consisting of three on the part of the House and two on the part of the Senate, to ascertain and adjust the amount coming to this State under the act of February fourth, eighteen hundred and sixty-three, passed by the general assembly of Virginia, entitled "An Act making an appropriation to the proposed state of West Virginia, &c.," and to cause the said money to be passed to the credit of the treasury of this State; and make report to the legislature at as early a day as convenient.

ADOPTED, July 23, 1863.

[No. 10.] Joint Resolution raising a Committee to examine the Auditor's Office.

Resolved by the Legislature of West Virginia, That a committee of five from the House and two from the Senate are hereby appointed to examine the auditor's office, and instructed to report if any further legislation is necessary to enable the auditor to discharge his duties; and shall further report any facts deemed pertinent by them.

ADOPTED, July 28, 1863.

[No. 11.] Joint Resolution providing for a Recess.

Resolved by the Legislature of West Virginia, That when the Legislature adjourn on Wednesday, the fifth day of August, it will adjourn to meet on the second day of September; provided, that members and officers of the Legislature shall receive no pay for the time during such recess.

ADOPTED, August 1, 1863.

[No. 12.] Joint Resolution respecting the Printing of the Acts.

Resolved by the Legislature of West Virginia, That instead of the number heretofore directed, there be printed in all two thousand five hundred copies of the acts: of which five hundred shall be distributed, in sheets, among the members, as the session progresses, and the remainder be reserved to be indexed and half bound, in the usual manner, at the end of the session; and that two thousand copies of the constitution be printed and bound with the acts of the legislature.

ADOPTED, August 1, 1863.

[No. 13.] Joint Resolution respecting the Delivery of the Books and Papers in the Auditor's Office.

Resolved by the Legislature of West Virginia, That the governor of this State be authorized to receive from the governor of Virginia the books and papers of the auditor's office, referred to in the message of July 28, 1863, and for and on behalf this State, to give a proper receipt for the same, engaging to deliver them to the proper authorities of the state of Virginia, if they shall be demanded.

ADOPTED, August 5, 1863.

[No. 14.] Joint Resolution authorizing the Treasurer to receive Money due from the state of Virginia.

Resolved by the Legislature of West Virginia, That the treasurer of the state of West Virginia be authorized to receive and place to the credit of West Virginia, from the treasurer of the commonwealth of Virginia, the sum of forty-five thousand seven hundred and seventy-one dollars and fifty cents, the balance found to be due from the commonwealth of Virginia to the state of West Virginia, by the joint committee appointed to settle and adjust the amount coming to this State under the act of February 4, 1863.

ADOPTED, August 5, 1863.

[No. 15.] Joint Resolution relating to the Payment of certain Claims against the State of Virginia.

Resolved by the Legislature of West Virginia, That a joint committee of three from the Senate and five from the House of Delegates, be appointed to inquire into the expediency of providing for the auditing and paying of outstanding claims against the commonwealth of Virginia within the limits of this state, and that said committee report by bill or otherwise.

ADOPTED, September 12, 1863.

[No. 16.] Joint Resolution expressing Sympathy with the Loyal People of East Tennessee.

Resolved by the Legislature of West Virginia, That we have heard with delight the cheering news of the recent triumph of our arms in the south and southwest; and especially do we hail with unbounded joy the tidings of the deliverance of our suffering loyal brethren of East Tennessee from the despotism of the so-called Southern Confederacy. We assure them of our sympathy for their suffering, our pride in their unconquerable devotion to their country, and our determination to co-operate with them in defending their liberty, and in sustaining the government in its efforts to crush out the accursed rebellion which has desolated their homes and ours.

ADOPTED, September 17, 1863.

[No. 17.] Joint Resolution construing the "Act making an appropriation of $50,000 for procuring Arms, Equipments, and Munitions of War, &c."

It being represented to the legislature that there is doubt as to the construction of an act, passed July second, eighteen hundred and sixty-three entitled "An Act making an appropriation of fifty thousand dollars for procuring arms, equipments and munitions of war,"

Resolved by the Legislature of West Virginia, That said appropriation was intended, and is hereby construed, so as to cover all expenses incident to the organization of the militia, and their pay and subsistence while in actual service since the twentieth day of June, eighteen hundred and sixty-three.

ADOPTED, September 17, 1863.

[No. 18.] Joint Resolution raising a Committee to consider the Military Condition of the State.

Resolved by the Legislature of West Virginia, That a committee of two members of the Senate, and three of the House of Delegates, shall be appointed to consider and report what steps should and can with propriety be taken by this legislature to insure a more efficient defense of the persons and property of our citizens against the common enemy, including the guerilla bands by whom so large a portion of our territory is now infested.

ADOPTED, September 24, 1863.

[No. 19.] Joint Resolution raising a Committee to examine and report upon certain Militia Claims.

Resolved by the Legislature of West Virginia, That a committee be appointed composed of two from the Senate and three from the House, to examine all claims for militia services within the bounds of this state, rendered since the beginning of the present war, including the fees and other expenses of enrolling organizing and examining the militia, under general order number ninety-eight, of the war department; and report to each house as to the amount and justice of each claim.

ADOPTED, September 24, 1863.

[No. 20.] Joint Resolutions relating to the State Seals.

Resolved by the Legislature of West Virginia:

1. The legend, mottoes and devices reported by the committee on the subject, are hereby adopted as the legend, mottoes and devices of the coat of arms and great and less seals of the state, respectively.

2. So much of the report of the said committee as is descriptive of the said legend, mottoes and devices is hereby directed to be published with these resolutions in the volume of the acts and joint resolutions passed at the present session of the legislature.

3. The governor is authorized and requested to have engraved a great and less seal, of the dimensions, and bearing the devices, &c., recommended by the said report, the same to be the only legal official seals of the state; and also to procure proper presses for conveniently using the same.

ADOPTED, September 26, 1863.

[No. 21.] Joint Resolution relative to an Appropriation of $600,000 for Military purposes.

Resolved by the Legislature of West Virginia, That a joint committee consisting of three members from the House and two from the Senate, be appointed to inquire into the expediency of reporting a bill making an appropriation of six hundred thousand dollars for military purposes for the defense of the state, subject to the order of the governor.

ADOPTED, October 1, 1863.

[No. 22.] Joint Resolution concerning Poll Books and Forms of Election.

Resolved by the Legislature of West Virginia, That the secretary of the state be and he is hereby directed to procure and furnish the superintendents of elections for the several counties in the state, the poll books and forms to be distributed by them under the fifth section of the election law, passed September twenty-fourth, eighteen hundred and sixty-three.

ADOPTED, October 5, 1863.

[No. 23.] Joint Resolution raising a Committee to contract for the preparation of a Code.

Resolved by the Legislature of West Virginia, That a joint committee of two from the House, and one from the Senate, be appointed to contract with Daniel Lamb, Esq., to prepare a Code of laws for the state; the work to be commenced, prosecuted, reported, completed and paid for, as may be agreed upon by the parties.

ADOPTED, October 8, 1863.

[No. 24.] Joint Resolution respecting the construction of the second section of the Ordinance of the Constitutional Convention for the organization of the state of West Virginia.

Resolved by the Legislature of West Virginia, That the terms of all officers, legislative, executive or judicial, elected on the twenty-eighth day of May last, began on the twentieth day of June following, and not previously. No such officer is or was at any time entitled to salary or compensation for any time preceding the twentieth day of June, in the present year.

ADOPTED, October 15, 1863.

[No. 25.] Joint Resolution calling upon the Auditor for certain Information.

Resolved by the Legislature of West Virginia, That the auditor is hereby peremptorily required to furnish, without delay, from all the sources accessible to him, the information required by a resolution of the house, adopted on the seventh day of July last, and by another resolution of the same, adopted on the seventeenth day of September last.

ADOPTED, October 17, 1863.

[No. 26.] Joint Resolution relating to the Contract for a Code.

Resolved by the Legislature of West Virginia, That house bill number one hundred and fifteen, "a bill to provide for revising, collating and digesting into a code the laws now in force within this state," together with the contract upon which it is founded, be referred to the special joint committee with whom said contract with Daniel Lamb was made.

ADOPTED, October 23, 1863.

[No. 27.] Joint Resolution in relation to the Navigation of the Ohio River.

WHEREAS, By an act of the general assembly of Virginia, passed on the eighteenth day of December, in the year one thousand seven hundred and eighty-nine, preparatory to the erection of the district of Kentucky, then within the jurisdiction of the state of Virginia, into an independent state of the United States, it was, among other things, enacted, that "the use and navigation of the Ohio river, so far as the territory of Kentucky or of Virginia lies thereon, shall be free and common to the citizens of the United States;" which was confirmed by another act of the said general assembly, passed on the thirteenth day of January, in the year one thousand eight hundred, after the erection of the state of Kentucky; whereby the state of Virginia relinquished to the United States any right she may have had to the exclusive navigation of so much of the said river as previously to the cession of the North West Territory and the erection of the state of Kentucky was entirely within her territory and jurisdiction;

And, whereas, The said river is a navigable highway of commerce between different states of the Union, and the congress of the United States has, from the earliest period, in the administration of its power to regulate commerce among the several states, claimed and exercised the right to regulate the navigation of the said river to the exclusion of the states binding thereon, and has, moreover, derived a considerable revenue from the enrollment and licensing of vessels navigating the same, and has established ports of entry at its head and other places thereon;

And, whereas, It is the duty, as it is the right, of congress, and in accordance with its long established policy, to promote and facilitate commerce between the several states, by the improvement of navigable rivers constituting its immediate channels; and this duty, in reference to the Ohio river, has been repeatedly acknowledged by the passage and execution, from time to time, of laws having in view the partial improvement thereof;

And, whereas, The war prosecuted for the suppression of the existing rebellion, and, particularly, some of its more recent events, have forcibly demonstrated that the safety in time of war and insurrection of several of the states, especially of those binding on the said river, imperatively demands that the navigation thereof should be so improved and maintained as to place and keep it, at all times, in a condition to permit the free passage throughout its whole course of armed vessels, and the easy transportation of troops and munitions of war from point to point on its banks, and between distant sections of the Union;

And, whereas, This legislature is informed that congress, at its approaching session, will be again urged to appropriate the extraordinary sum of seventeen millions of dollars to the improvement of the Illinois and New York canals, each lying wholly within the bounds of a single state, and neither of them constituting by itself a channel of commerce between different states, on the alleged ground of the necessity of such improvement in time of war or insurrection, and, particularly, in time of war with a foreign power with whom we are now at peace;

And, whereas, The improvement of the said canals as proposed, would, in the absence of the thorough and permament improvement of the Ohio river, tend to divert from this and other states a large portion of the commerce and transportation they now enjoy, and to deprive them of advantages they might otherwise derive from the projected railroad to the Pacific Ocean; therefore,

Resolved by the Legislature of West Virginia,

1. The senators and representatives of this state in congress are earnestly requested to endeavor to-obtain from that body the early passage of an act providing for the adequate and permanent improvement of the navigation of the Ohio river, with an appropriation of funds sufficient for the purpose.

2. The legislatures of all other states interested are requested to co-operate in effecting the object indicated in the foregoing resolutions.

3. The governor is requested to forward a copy of this preamble and resolutions to the executives of each of the states binding on the Ohio river, and of such other states as are more immediately interested in the navigation thereof, with a request to lay the same before their respective legislatures.

Adopted, October 24, 1863.

[No. 28.] Joint Resolution respecting the Report of the Joint Committee on the Auditor's Office.

Resolved by the Legislature of West Virginia, That the report of the joint special committee in regard to the auditor's office be adopted and filed with the keeper of the rolls, and be not printed.

Adopted, October 29, 1863.

[No. 29.] Joint Resolution prescribing how certain money appropriated shall be paid.

Resolved by the Legislature of West Virginia, That the sum of two thousand and twenty-eight dollars and twenty cents, which, by the "Act making appropriations," passed August fifth, eighteen hundred and sixty-three, was appropriated to the payment of expenses of elections held under and by virtue of the ordinances and schedule of the late constitutional convention, be paid to the sheriffs of the several counties specified in the report of the committee on taxation and finance; or if there be no such sheriff in any county, then to the superintendents of the general election held in such county on the twenty-eighth of May last, to be paid over by them to the parties respectively entitled thereto; and the receipts of the said sheriff, or any of the superintendents of such counties where there is no sheriff, shall be sufficient vouchers to the auditor and treasurer of this State, for the payment of the amounts due the several counties, as per said report.

ADOPTED, November 2, 1863.

[No. 30.] Joint Resolutions concerning the Auditor and Secretary of the State.

WHEREAS, it appears by the recent report of the committee on executive offices, that the auditor and secretary of the state had, on the first and second days of this month, over-drawn from the treasury, the former the sum of four hundred and fifty-four dollars, and the latter the sum of three hundred and ninety-three dollars and twenty-eight cents, alleging such over-drafts to be due to them respectively, for their salaries from the fourth day of March to the twentieth day of June last, the latter being the day on which the State was inaugurated and the constitution thereof first came into operation;

And WHEREAS, the legislature, by a joint resolution, which finally passed on the fourteenth day of October, eighteen hundred and sixty-three, have formally declared, that "the terms of all officers, legislative, executive and judicial, elected on the twenty-eighth day of May last, began on the twentieth day of June following, and not previously," and that "no such officer is, or was at any time, entitled to salary or compensation for any time preceding the twentieth day of June in the present year;" therefore

Resolved by the Legislature of West Virginia,

1. Any officer who has drawn from the treasury of the State, or in any way received, compensation as such officer for any time previous to the twentieth day of June last, is hereby required, within ten days from the passage of this resolution, to refund the same to the governor, to be by him deposited in the treasury to the credit of the proper appropriation.

2. No officer failing to comply with the requisition of the foregoing resolution, shall be entitled to draw or receive from the treasury for his own use, any sum of money whatever, whether on account of his salary, or as compensation for his official services, until the money improperly drawn from the treasury by him as aforesaid, is made good.

ADOPTED, November 12, 1863.

[No. 31.] Joint Resolution requesting the Governor to procure and communicate information respecting the Blind.

Resolved by the Legislature of West Virginia, That the governor of this State be respectfully requested to ascertain from the superintendent of the Asylum for the Blind of the state of Ohio, whether blind persons can be received and educated in said institution until this State can make suitable provision for the education of this unfortunate class of her citizens at home, and what will be the probable expense of their maintenance and education therein; and that he report such information as he may obtain in relation thereto, at as early a day as practicable, to the legislature.

ADOPTED, November 16, 1863.

[No. 32.] Joint Resolution raising a Committee to lease the Lancasterian Academy.

Resolved by the Legislature of West Virginia, That a committee of three, two on the part of the House and one on the part of the Senate, be appointed to contract with the trustees of the Lancasterian Academy, in the city of Wheeling, to lease to the state of West Virginia the academy building and grounds for a term of three years, with the privilege of retaining the property for five years, at an annual rent of one thousand dollars, to be paid in semi-annual payments.

Adopted, November 17, 1863.

[No. 33.] Joint Resolution directing the Auditor to furnish and instruct the Assessors.

Resolved by the Legislature of West Virginia, That the auditor be directed to prepare assessors' books, with proper headings, and forward them in due time to the assessors of the revenue, with instructions to them to proceed with the assessment of the land and property, leaving out the amount of tax to be charged until the legislature shall determine the rate of taxation.

Adopted, November 24, 1863.

[No. 34.] Joint Resolution relating to a final Adjornment.

Resolved by the Legislature of West Virginia, That when the legislature adjourn on Tuesday, the eighth day of December, it adjourn *sine die.*

Adopted, November 25, 1863.

[No. 35.] Joint Resolution requesting the Governor to apply to the President for certain Information and Relief.

Whereas, Considerable expenses have been incurred in organizing, and sustaining while so organized, loyal citizens into companies, battalions and regiments for our own protection against invasion and rebellion, also in supplying and defraying expenses for transporting and delivering arms and munitions of war for the use of loyal citizens of our State, therefore,

Resolved by the Legislature of West Virginia, That the governor be requested to apply to the President of the United States for relief from the fund appropriated by act of congress, passed July thirty-first, eighteen hundred and sixty-one, entitled "An Act making an appropriation to pay the expenses of transporting and delivering arms and munitions of war to the loyal citizens of the states of which the inhabitants now are, or hereafter may be in rebellion against the government of the United States and to provide for the expense of organizing them into companies, battalions, regiments, or otherwise for their own protection against domestic violence, insurrection, invasion or rebellion;" and ascertain, as far as may be consistent with the views of the President, the amount heretofore set apart or paid to the authorities of Virginia, at Wheeling, for the objects specified.

2. The representatives in Congress from this State, are hereby requested to aid our governor in procuring the relief and information hereby sought.

Adopted, December 7, 1863.

[No. 36.] Joint Resolution extending time for Final Adjournment.

Resolved by the Legislature of West Virginia, That the joint resolution, providing that when the two Houses adjourn on Tuesday, the 8th instant, they shall adjourn *sine die*, be rescinded.

Resolved, further, That when the two Houses adjourn on Friday, the 11th instant, they do adjourn *sine die*.

ADOPTED, December 8, 1863.

[No. 37.] Joint Resolution relating to Forms for Justices and Constables.

Resolved by the Legislature of West Virginia, That the reviser of the Code be requested to prepare, as soon as practicable, forms for the justices and constables of the state, to be used by them in their official capacity, in both civil and criminal cases. And, further, that when so prepared, the Clerk of the House of Delegates be authorized to have one thousand copies thereof printed in a form similar to the acts; five hundred of which he shall have bound with a like number of the acts already authorized to be printed and bound, which said five hundred copies of acts and forms bound together, or as many thereof as may be necessary, shall be distributed in the manner prescribed by law, to the justices of the state; and the remaining five hundred copies of said forms shall be delivered unbound to the Scretary of the State, and be by him distributed to such constables as may apply for them, in proportions of one copy to each constable in the state.

ADOPTED, December 8, 1863.

[No. 38.] Joint Resolution respecting the Occupation of the Linsley Institute Building.

Resolved by the Legislature of West Virginia, That the Governor be authorized, whenever he may deem it expedient to do so, to cause the executive offices, or any of them, to be removed to the Linsley Institute Building, and to designate what room or rooms in the said building shall be occupied for any office so removed.

Resolved, further, That the Governor have authority to rent any portion of said building not required for the use of the legislature, or for executive offices as aforesaid, to such person and on such terms as he may deem expedient; provided, that no part of the building shall be occupied or rented for schools during any session of the legislature.

ADOPTED, December 9, 1863.

[No. 39.] Joint Resolution imposing Certain Duties on the Clerk of the House of Delegates.

Resolved by the Legislature of West Virginia, That the Clerk of the House of Delegates be authorized to distribute to the members of this legislature, the parts of the acts authorized to be but not yet printed and distributed, to which they are entitled by joint resolution, passed on the first day of August, eighteen hundred and sixty-three; and also the acts in pamphlet form directed to be printed and distributed by the act passed on the seventh day of December, eighteen hundred and sixty-three, entitled "An Act authorizing the publication of an extra number of the laws;" and that he send the same by mail or express, as he shall deem most expedient.

ADOPTED, December 10, 1863.

[No. 40.] Joint Resolution in relation to the Halls and Furniture of the Legislature.

Resolved by the Legislature of West Virginia, That the Halls, and Committee and Clerks' rooms, of the Senate and House of Delegates, and all the furniture and fixtures thereto belonging, be given in charge, for the period between the adjournment of this and the meeting of the next legislature, of S. G. W. Morrison, Sergeant-at-arms, and John H. Charnock, present janitor of the House of Delegates; and that they be authorized to incur such expense as may be necessary to have the said halls and rooms in proper condition for the occupation of the next legislature; and that they be allowed for the services herein required, such reasonable compensation as may be agreed upon.

ADOPTED, December 10, 1863.

[No. 41.] Joint resolution concerning an Office for the Clerk of the Supreme Court of Appeals.

Resolved by the Legislature of West Virginia, That the Governor be authorized to assign a room in the Linsley Institute, for an office for the Clerk of the Supreme Court of Appeals.

ADOPTED, December 11, 1863.

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ACTS

OF THE

LEGISLATURE

OF

WEST VIRGINIA,

AT ITS

SECOND SESSION

COMMENCING JANUARY 19, 1864.

WHEELING.
1864.

ACTS.

CHAP. 1.—An ACT supplementary to the Act to provide for the relief of the Families of Soldiers.

Passed January 26, 1864.

Be it enacted by the Legislature of West Virginia:

1. The supervisors of the several counties of the State are hereby authorized, from time to time during the war, to borrow money in their corporate names, for such time and on such terms as may be agreed upon, for the purpose of providing for the support and relief of the families of living and deceased soldiers of their respective counties; and to issue for such loans notes, bonds, or certificates, signed by their president or clerk, with or without interest coupons attached; and to levy on the taxable property of their respective counties so many cents on every hundred dollars of the value thereof as they may deem necessary adequately to provide for the payment of the principal and interest of such loans.

Supervisors authorized to borrow money.

And to levy tax on property.

2. Such loans may be ordered or agreed upon and such levies made at any stated or special meeting of the board; but if a special meeting be called for the purpose, at least seven days' notice of the time, place and object thereof must be given to the supervisors constituting the board.

Meeting of board for that purpose.

3. It shall be lawful for any bank or branch to make such loan, and to discount or purchase any such note, bond or certificate, though the same be not payable within six months.

Banks authorized to loan.

CHAP. 2.—An ACT requiring copies of certain Official Bonds to be transmitted to the Auditor.

Passed February 3, 1864.

Be it enacted by the Legislature of West Virginia:

1. A copy of the bond of every sheriff, assessor and county treasurer, and of the bond of the clerk of the supreme court of appeals, shall be transmitted to the auditor by the officer in whose office the original is filed, within two months after the same is filed in his office; which copies shall be filed and preserved in the auditor's office. Any officer who shall fail to transmit such copy within the time above specified, shall forfeit one hundred dollars.

Bonds of sheriff, assessor, county treasurer and clerk of the court of appeals.

Penalty for failure.

2. The seventeenth section of the Act passed June twenty-ninth, eighteen hundred and sixty-three, entitled "An Act relating to official bonds," is hereby repealed.

Law repealed.

CHAP. 3.—An ACT to allow Alfred Brown to build a Mill at Red House Shoals, in Putnam County.

Passed February 5, 1864.

Be it enacted by the Legislature of West Virginia:

Authority conferred on Alfred Brown.

1. It shall be lawful for Alfred Brown to build a floating mill at Red House Shoals, in Putnam county, he first obtaining the consent of the board of the Kanawha Improvement, by paying to said board such amount as they may deem the privilege worth.

Condition.

Authority conferred on another in certain case.

2. If the said Brown neglect or fail to erect such mill for the space of twelve months from the passage of this Act, it shall be lawful for some other person to erect the same upon the same terms and under the same reuglations as if the said Alfred Brown was to erect the same.

Obstruction of navigation forbidden.

3. In either case, the navigation of the said river is not to be impeded.

CHAP. 4.—An ACT in relation to the collection of the Public Revenue for the year 1863.

Passed February 5, 1864.

Be it enacted by the Legislature of West Virginia:

Commission for collecting taxes for 1863.

There shall be allowed to every sheriff for collecting the revenue levied in the year eighteen hundred and sixty-three a commission of seven and one-half per centum on the amount of taxes with which he is chargeable; and if the sheriff of any county, where the amount of taxes with which he is chargeable does not exceed the sum of ten thousand dollars, shall pay the same, or any part thereof, into the treasury within the time now required by law, he shall be allowed a further additional commission of two and one-half per centum on the amount so paid.

Additional commission in certain case.

CHAP. 5.—An ACT relating to the Fees of Jailors.

Passed February 6, 1864.

Be it enacted by the Legislature of West Virginia:

1. In criminal and civil cases, jailors shall be entitled to charge the following fees:

Commitment.

For receiving a person in jail when first committed, twenty-five cents;

Per diem for keeping.

For keeping and supporting him therein, for each day, forty-five cents;

Discharge.

For discharging him therefrom, twenty-five cents.

To whom chargeable.

2. In cases of felony, the said fees shall be chargeable to the State; in cases of misdemeanor, to the county; in civil cases, to the party at whose suit the prisoner is committed.

3. The thirty-seventh section of chapter one hundred and eighty-four of the code of Virginia, second edition, and so much of the thirteenth section of said chapter as is inconsistent herewith are hereby repealed.

Laws repealed.

CHAP. 6.—AN ACT to amend and re-enact the first section of the act entitled "An act supplementary to the act to provide for the relief of the Families of Soldiers," passed January 26, 1864.

Passed February 6, 1864.

Be it enacted by the Legislature of West Virginia:

1. The first section of the act entitled "an act supplementary to the act to provide for the relief of the families of soldiers," passed January twenty-sixth, eighteen hundred and sixty-four, is hereby amended and re-enacted so as to read as follows:

Supervisors authorized to borrow money to pay soldiers bounties.

"1. The supervisors of the several counties of the state, are hereby authorized, from time to time during the war, to borrow money in their corporate names, for the support and relief of the families of living and deceased soldiers, or for the payment of bounties to soldiers, in their respective counties, volunteering, or who may have volunteered, in the service of the United States; and to issue for such loans notes, bonds or certificates, signed by their president and clerk, with or without interest coupons attached; and to levy on the taxable property of their respective counties so many cents on every hundred dollars of the value thereof as they may deem necessary adequately to provide for the payment of the principal and interest of such loans: *Provided*, however, that the supervisors of each county shall have the power of exempting any man from the payment of any portion or all of such tax who may have heretofore volunteered, or may hereafter volunteer, as a private soldier and enter the army of the United States, during the time he may remain in such service, or who may have died on been killed while in such service."

And to levy tax on property.

Exemption of property belonging to soldiers.

CHAP. 7.—An ACT to amend and re-enact the first section of the act entitled "An act to provide how notice shall be given of applications to the Legislature for special acts concerning Banks of Circulation or Internal Improvement Companies," passed October 24, 1863.

Passed February 9, 1864.

Be it enacted by the Legislature of West Virginia:

1. The first section of the act entitled "an act to provide how notice shall be given of applications to the legislature for special acts concerning banks of circulation or internal improvement companies," is hereby amended and re-enacted so as to read as follows:

"1. No act to incorporate any bank of circulation or internal improvement company, or to confer additional privileges on the

Time for giving notice reduced to two weeks.

same, shall be passed unless public notice of the intended application for such act be given by posting the same, at least two weeks before the application is presented to the legislature, at the front door of the court house of the county where the principal office or place of business of the corporation is to be kept, and also by advertisement for two weeks successively in some newspaper, if there be any, in such county, or, if there be no newspaper printed in the county, then in some newspaper printed at the seat of government. The notice shall show the names and residence of the applicants, and the nature of the act to be applied for; and with any such application there shall be submitted to the legislature proper evidence, by affidavit or otherwise, that the regulations prescribed by this act have been observed."

CHAP. 8.—An ACT to authorize suits to be brought in the county of Preston in cases heretofore cognizable in certain other counties.

Passed February 10, 1864.

Be it enacted by the Legislature of West Virginia:

Transfer of suits from Hampshire, Hardy or Pendleton.

1. Any action at law or suit in equity which, according to the one hundred and sixty-ninth chapter of the code of Virginia, second edition, might be brought in the county of Hampshire, Hardy, or Pendleton, may be hereafter brought in the county of Preston; but nothing herein contained shall be construed to affect any provision of law for the limitation of actions or suits.

Plaintiff required to advance jury costs.

2. No jury shall be called or impannelled in any action or suit brought in the county of Preston by virtue of this act until and unless the plaintiff pay to the clerk of the court twelve dollars to defray jury costs; which sum the said clerk shall pay into the treasury of the said county of Preston, and if judgment be rendered for the plaintiff shall tax the same in the costs to be recovered by him, in lieu of the sum heretofore in such case allowed by law. If judgment be rendered against the plaintiff, no jury costs shall be taxed against him if he has paid the sum of twelve dollars to the clerk as aforesaid.

CHAP. 9.—An ACT making an appropriation for the entertainment of of Veteran Regiments of this State.

Passed February 11, 1864.

Be it enacted by the Legislature of West Virginia:

$5,000,

At disposal of governor.

Five thousand dollars are hereby appropriated, out of any money in the treasury not otherwise appropriated, to be placed at the disposal of the governor, for the purpose of entertaining the several veteran regiments of this state, when in his opinion the occasion may require it.

CHAP. 10.—An ACT further to provide for the Collection of Taxes.

Passed February 12, 1864.

Be it enacted by the Legislature of West Virginia:

Preamble.

1. Whereas, during the existence of the present rebellion the collection of the taxes in some of the counties of the state is both difficult and dangerous, and from this cause and others the compensation allowed to the sheriffs and collectors by the twenty-fourth section of the act passed the seventh of December, eighteen hundred and sixty-three, entitled "An Act for the collection of taxes," is in certain cases insufficient, and proper persons cannot, therefore, be had to undertake the office of sheriff in such counties: The governor, auditor and treasurer, or any two of them, are hereby authorized, by writing under their hands, to be recorded in the journal of the executive proceedings, to allow or agree to allow to the sheriff or collector of any county, if they find it expedient and proper to do so, a commission, in addition to that mentioned in the said twenty-fourth section, and not to exceed, in any instance, ten per cent on the amount of taxes with which such sheriff or collector shall be chargeable, of two and a-half per cent on such portion thereof as he shall punctually pay into the treasury within the time required by law.

Authority of governor, auditor, and treasurer to allow collectors additional commission.

2. The preceding section shall not apply to the counties of Hancock, Brooke, Ohio, Marshall, Wetzel, Monongalia, Marion, Preston, Taylor, Tyler, Pleasants, Ritchie, Doddridge, Harrison, Wood, Upshur, Barbour, and Mason.

Counties excepted from operation of act.

3. The act passed October nineteenth, eighteen hundred and sixty-three entitled "An Act to provide for the appointment of collectors in counties where there are no sheriffs," so far only as it relates to the compensation of collectors of the revenue, is hereby repealed.

Law repealed.

CHAP. 11.—An ACT concerning Deputy Assessors.

Passed February 13, 1864.

Be it enacted by the Legislature of West Virginia:

An assessor in any county in which no supervisors have been elected or no boards of supervisors organized, unable, from sickness or other cause, to perform the duties of his office, may, at his own expense, appoint a deputy, to be approved of by the recorder of his county or by the judge of the circuit; who shall keep a record of such approval. Such deputy, after taking the proper oaths, may discharge any of the duties of the assessor; and his principal shall be liable for the faithful performance of the same.

Authority of certain assessors to appoint deputies.

Approval of appointment.

CHAP. 12.—An ACT for the relief of William Nixon and William Turner.

Passed February 13, 1864.

Be it enacted by the Legislature of West Virginia:

William Nixon, allowed $645.

1. The auditor is hereby directed to credit William Nixon, collector of the revenue for Wayne county, with six hundred and forty-five

dollars in the settlement of the said Nixon for the revenue of said county, for the year eighteen hundred and sixty-one, the said sum having been taken from him by force, by some rebels in September, eighteen hundred and sixty-two. The auditor is hereby directed to credit William Turner, late collector of the revenue for Wayne county, with two hundred dollars in the settlement with the said Turner, for the revenue of said county for the year eighteen hundred and sixty-one, the said sum having been taken from William Nixon by force, by some rebels in September, eighteen hundred and sixty-two.

And William Turner $200, in settlement with auditor.

Former act repealed.

2. The "Act for the relief of William Nixon, collector of the revenue for Wayne county," passed October third, eighteen hundred and sixty-three, is hereby repealed.

CHAP. 13.—An ACT to allow the Recorders of Gilmer and Ritchie counties to issue Licenses for the Marriage of persons residing in Calhoun county.

Passed February 13, 1864.

Be it enacted by the Legislature of West Virginia:

Authority of recorders of Ritchie and Gilmer.

1. A license for a marriage may be issued by the recorder of Gilmer or the recorder of Ritchie county, when the female to be married resides in the county of Calhoun.

Law repealed.

2. The first section of chapter one hundred and eight of the Code of Virginia, second edition, so far only as it is inconsistent with this act, is hereby repealed.

CHAP. 14.—An ACT giving certain officers further time to Qualify and give Bond.

Passed February 15, 1864.

Be it enacted by the Legislature of West Virginia:

Officers elected allowed thirty days after passage of act.

Penalty for failure.

All officers heretofore elected under and according to the laws of this state may take the proper oaths of office and give their official bonds within thirty days after the passage of this act, notwithstanding any former law to the contrary; and if any such officer who has not already taken the oath of office and given bond according to law fail to do so within the time hereby prescribed, his office shall be thereby vacated.

CHAP. 15.—An ACT to provide for repairing the road and rebuilding the bridges of the Sistersville and Salem Turnpike company, in the county of Tyler.

Passed February 16, 1864.

Be it enacted by the Legislature of West Virginia:

Transfer of road to county.

1. The Board of Public Works shall upon the request of the Board of Supervisors of Tyler county, transfer the right and interest of the state in so much of the road of the Sistersville and Salem Turnpike

Management of road.

Company as lies in the county of Tyler, to said county. Said road shall be managed by a board of five directors, three of whom shall be appointed by the board of supervisors of said county, and two shall be chosen by the stockholders of said company. Said directors shall appoint one of their number president.

Additional stock

Authority of supervisors to subscribe and levy tax.

And to regulate tolls.

2. It shall be lawful for said board of directors to receive subscriptions to an amount not exceeding twelve hundred dollars, to be divided into shares of five dollars each, as an additional stock of said company. Said board of supervisors, in behalf of said county, may subscribe for one half of said stock, and levy the amount on the taxable property of said county; and it shall regulate the tolls to be taken on said road, not exceeding the rates now fixed by law.

Application of tolls.

3. The tolls collected on said road, after payment of expenses and repairs, shall be applied to the redemption of said stock so subscribed by said board of supervisors, by payment of the amount thereof with interest, and afterwards to the payment of the residue of said additional stock.

Government of company generally.

4. In all other respects, not inconsistent with this act, said company shall be regulated by the existing laws of this State relating thereto, with the powers and subject to the restrictions of said laws.

CHAP. 16.—An ACT to amend the act to regulate elections by the people.

Passed February 19, 1864.

Be it enacted by the Legislature of West Virginia*:*

Oath of voter.

1. The oath to be taken by the voter in the case specified in the twenty-fourth section of the act passed November thirteenth, eighteen hundred and sixty-three, entitled "An Act to regulate elections by the people," shall be that he will support the constitution of the United States and the constitution of the state of West Virginia.

Duties imposed on supervisor.

2. The supervisor and inspectors holding an election at any place of voting, or any two of them, may make and sign the certificates mentioned in the thirtieth section of the said act, and seal up, mark and endorse the package of ballots, as therein directed to be done by the two inspectors. And the fifty-seventh section of the said act shall be held applicable to any supervisor who shall assist in making any false certificate or return respecting an election, knowing the same to be false.

Penalty for "treating" voters.

3. If any person, whether a candidate or not, offer gratuitously any intoxicating drink to any voter on the day of an election, he shall forfeit not less than ten nor more than fifty dollars for every such offence.

Compensation of officers of election.

4. The board of supervisors of any county may regulate by ordinance the compensation to be paid the officers holding state, county

and township elections within the said county and making returns thereof; but such compensation shall not exceed fifteen cents per hour to any officer for the time he is necessarily employed in such service, and where no such ordinance is passed the allowance shall be as prescribed in the fiftieth section of the above mentioned act.

Law repealed.

5. The said act, so far as it is inconsistent herewith, is hereby repealed.

CHAP. 17.—An ACT to regulate Municipal Elections.

Passed February 22, 1864.

Be it enacted by the Legislature of West Virginia:

Manner of voting

1. All elections by the people for members of council and other officers of incorporated cities and towns shall be by ballot, and shall as far as practicable be so conducted that it may not be known at the polls for whom any person has voted.

Oath of voter.

2. In time of war, insurrection or public danger, every person present and offering to vote at any such election shall, if required by any voter of the city or town, take an oath to support the constitution of the United States and the constitution of the state of West Virginia, or produce to the officers superintending the election the certificate of some person authorized to administer oaths that he has taken such oath, under pain of suspension of his right of voting. Any one of the officers superintending such election is hereby authorized to administer the said oath at the polls; and also to swear any person at the polls to answer questions respecting any right to vote which is disputed.

By whom administered.

Soldiers' residence.

3. If any person in the military, naval, or marine service of the United States or in the service of this State was a resident of any incorporated city or town, or of any ward or division thereof, at the time he entered such service, his residence, until he makes known his intention to change the same, shall be considered as continuing in the said city, town, ward or division during the said service, although he be stationed or employed elsewhere; but no person in the military, naval or marine service of the United States shall be deemed a resident of any city, town, ward or division by reason of his being stationed therein.

Const. art. 1 §6.

Soldiers' votes.

4. Any person entitled to vote at any such election as is mentioned in the first section of this act, who is necessarily absent from the city or town on the day of the election in the service of the United States or of this State, may vote at such election in the manner prescribed in the twenty-sixth section of the act passed November thirteenth, eighteen hundred and sixty-three, entitled "An Act to regulate elections by the people," except that the envelope or cover enclosing his ballot shall be addressed and transmitted to the officers

superintending the election at the place of voting in the said city or town at which he is entitled to vote, and that the said officers shall have the same powers and perform the same duties in respect to such votes as if they had been mentioned in the said twenty-sixth section instead of the supervisor and inspectors of the township.

5. The sixtieth section of the said act shall be held applicable to the elections mentioned in the first section of this act. Law applied.

6. The elections by the people for members of council and other officers of any incorporated city or town shall be held at such times and places, under the superintendence of such officers, and be subject to such regulations, not inconsistent with this act, as may be directed by the charter of such city or town or the by-laws or ordinances made in pursuance thereof. When, where, how and by whom elections held.

7. All former laws so far as they are inconsistent with this act are hereby repealed. Laws repealed.

CHAP. 18.—An ACT providing for the confinement and safe keeping of Persons sentenced to the Penitentiary.

Passed February 22, 1864.

Be it enacted by the Legislature of West Virginia:

1. The governor is hereby authorized to convey to the jail in the county of Ohio all persons convicted of felonies; and he shall have power to use and occupy said jail for the confinement and safe keeping of all persons sentenced or that may be hereafter sentenced to confinement in the penitentiary, until otherwise provided by law. Authority of governor to use Ohio county jail,

2. The governor shall also have power to make such arrangements with the board of supervisors of the county of Ohio as may be found necessary to carry into effect the provisions of this act. He shall have power also to make all needful provisions and regulations for the safe keeping, employment and discipline of convicts. And to make necessary arrangements and regulations,

3. The governor may, if in his judgment expedient, appoint a board of directors of the penitentiary; which board shall consist of not more than three persons. He may also appoint a superintendent of the penitentiary. He shall prescribe the duties of said directors and superintendent, and shall have authority to pay them, as a compensation for their services, a sum not exceeding one hundred dollars per annum for each director, and a sum not exceeding one thousand dollars per annum for the superintendent. And to appoint board of directors, And superintendent. Their compensation.

4. The governor shall have power to convey to any of the county jails in the state all persons convicted of felonies, and shall have power to use and occupy them for the confinement and safe keeping of all persons sentenced or that may hereafter be sentenced to confinement in the penitentiary, until otherwise provided by law. Authority of governor to use county jails.

CHAP. 19.—An ACT for the relief of Margaret Ray.

Passed February 24, 1864.

Be it enacted by the Legislature of West Virginia:

$30 paid for tax on hotel license refunded.

The auditor is hereby authorized to refund to Margaret Ray, of Marshall county, widow of the late John Ray, of said county, thirty dollars paid by him into the treasury of the state, as tax on a license as hotel keeper, in the year eighteen hundred and sixty-three.

CHAP. 20.—An ACT authorizing the appointment of Assessors in certain cases.

Passed February 25, 1864.

Be it enacted by the Legislature of West Virginia:

Appointments in cases of vacancy by whom made.

1. Wherever a vacancy exists in the office of assessor in any county or assessment district, the board of supervisors, if there be such board, and if there be no such board of supervisors of the county, the auditor, with the approval of the governor, may fill such office by appointing an assessor for the unexpired term thereof.

Authority of auditor respecting qualification and pay of assessor.

2. When there is no board of supervisors of the county, and the auditor shall appoint an assessor for the same or any assessment district thereof, pursuant to the preceding section, he shall have authority, with the approval of the governor as aforesaid, to dispense with the official bond required of such assessor, or to prescribe the penalty thereof and how such bond shall be approved and filed, and also to direct where the certificate of the oath to be taken by such assessor shall be filed; and to regulate the compensation of any assessor appointed as aforesaid, and pay the same out of the state treasury, provided the same shall in no case exceed double the rate or amount now allowed by law.

Laws repealed.

3. The forty-seventh section of the act passed November thirteenth, eighteen hundred and sixty-three, entitled "an act to regulate elections by the people," and the fourth section of the act passed December third, eighteen hundred and sixty-three, entitled "an act to provide for the assessment of taxes," so far only as they are inconsistent with this act, are hereby repealed.

CHAP. 21.—An ACT to amend the nineteenth section of the act to provide for the forfeiture of property in this state belonging to the enemies thereof.

Passed February 26, 1864.

Be it enacted by the Legislature of West Virginia:

Circuit court or judge authorized to enjoin executions about to be executed for the benefit of rebels.

The circuit court having jurisdiction, or the judge thereof in vacation, shall, on bill in chancery and proper evidence in support thereof, enjoin the execution of any judgment, decree or deed of trust, but so far only as it may appear that the same is about to be executed for the benefit of any person who is an enemy of this state within the meaning of the act passed November thirteenth, eighteen hundred and sixty-three, entitled "An Act to provide for the forfeiture of property in this state belonging to the enemies thereof."

CHAP. 22.—An ACT to provide for the recovery of certain claims transferred to this State by the State of Virginia.

Passed February 26, 1864.

Be it enacted by the Legislature of West Virginia:

Delinquent dues from old collectors of revenue.

Where any person who has heretofore acted as sheriff or collector of the revenue under the laws of the state of Virginia, within the territory which is now included in this state, has failed to account for and pay over the taxes and money, or any part thereof, with which he was chargeable, and the claim of the state of Virginia to the amount so in arrear has become the property of or been transferred to this state, it shall be the duty of the auditor to audit and state the account of such delinquent; and for that purpose the books of the commissioner of the revenue, lists of licenses, and delinquent lists, now in the possession of any clerk of a circuit court or recorder, shall be delivered to the auditor, if he so require, and he shall carefully ascertain and state therefrom the amount with which the said delinquent is chargeable, and cause proper proceedings to be instituted and prosecuted for the recovery thereof from the said delinquent and his sureties, or any of them. The account so rendered and stated by the auditor shall be *prima facie* evidence of the amount due; and no judgment or pretended judgment obtained against the delinquent and his sureties, or any of them, in the circuit court of the city of Richmond, shall be a bar or defence to any proceedings under this act, except so far as such judgment or pretended judgment may have been actually collected or paid.

To be audited by auditor.

Institution of proceedings for their recovery.

CHAP. 23.—An ACT concerning the unlawful detention of real estate.

Passed February 27, 1864.

Be it enacted by the Legislature of West Virginia:

Right of injured party to bring suit.

1. If any forcible or unlawful entry be made upon lands, or if, when the entry is lawful and peaceable, the tenant shall detain the possession of land after his right has expired, without the consent of him who is entitled to the possession, the party so turned out of possession, no matter what right or title he had thereto, or the party against whom such possession is unlawfully detained, may commence suit to obtain possession of the premises, within two years after the cause of action accrues, before a justice of the township in which the premises or any part thereof is situated.

Plaintiff's complaint.

2. The plaintiff shall, in such case, file his complaint in writing with the justice, describing the premises with reasonable certainty, and

stating by whom the possession thereof is unlawfully held, and the damages, if any, which he claims for the detention.

Summons to defendant.

3. The justice shall thereupon issue a summons directed to a constable of the township, or some person specially deputed by the justice to serve it, commanding him to summon the defendant to appear before the said justice, at a place and time therein specified, to answer the action of the plaintiff for unlawfully holding possession of the premises (describing them) against the consent of the plaintiff, and stating the amount of damages, if any, claimed by the plaintiff for the detention. The place at which the defendant is to appear must be within the township, and the time must not be less than three nor more than ten days from the delivery of the summons to the officer to be served.

Time and place for defendant's appearance.

Service of the summons.

4. The officer shall serve the said summons forthwith, by delivering a copy thereof or reading the same to the defendant, if found in the county, or if not so found, by delivering a copy thereof to some person of suitable age and discretion residing on the premises and informing him of the purport thereof; or if service cannot be made as aforesaid, then by posting a copy on some conspicuous part of the premises.

Return of summons.

Continuance.

Jury.

5. On the return of the summons, the justice shall proceed to try the case, unless either party show good cause for a continuance; but no continuance shall be granted for more than seven days, without consent of parties. A jury may be demanded by either party, and shall be sworn well and truly to try the truth of the plaintiff's complaint, according to the evidence; and if damages be claimed for the detention, to ascertain, if they find for the plaintiff, the amount he is entitled to for the detention.

Judgment—

6. If the verdict of the jury, or the finding of the justice when the case is tried without a jury, be for the plaintiff, judgment shall be rendered that he recover possession of the premises, with the damages, not exceeding one hundred dollars, if any, assessed for the detention, and his costs; and the justice, when required by the plaintiff, shall issue an execution, directed to some constable of the township, or a person specially deputed by the justice to execute the same, commanding him to deliver possession of the premises to the plaintiff by removing the defendant and his goods therefrom, or otherwise, as may be necessary; and also to collect the damages, if any, and the costs out of the personal property of the defendant. Such execution shall be, as to the delivery of possession, within three days, and for the collection of damages and costs, within thirty days, executed; and be returnable whenever executed.

Delivery of possession.

Collection of damages.

Time for executing judgment.

Constable's fee for delivering possession.

7. For delivering possession to the plaintiff under such execution, the officer shall be entitled to a fee of one dollar and fifty cents, besides his commission on the money made and paid to the justice; for which

fee the plaintiff shall be liable; but the same shall be included in the costs to be collected under the execution.

8. If the verdict of the jury or the finding of the justice be for the defendant, he shall have judgment and execution for his costs. Verdict or finding for defendant

9. The judgment of a justice under this act shall not be a bar to any subsequent action brought by either party. Subsequent action.

10. The justice may set aside the verdict of the jury or his own judgment, as in other cases; and the laws now in force relating to suits and proceedings before justices, so far as they are applicable and are consistent with this act, shall regulate the actions hereby authorized and the process to be issued therein. Appeals shall lie to the circuit court in all cases under this act, within the time, on giving the security, and with like effect, as in other cases before justices. Further regulations concerning suits. Appeals.

CHAP. 24.—An ACT to provide for repairing the road and bridges of the Newark and Elizabeth Turnpike Company, in the county of Wirt.

Passed February 27, 1864.

Be it enacted by the Legislature of West Virginia:

1. The board of public works shall, upon the request of the board of supervisors of Wirt county, transfer the right and interest of the state in the road of the Newark and Elizabeth Turnpike Company to said county. Said road shall be managed by a board of five directors, three of whom shall be appointed by the board of supervisors of said county, and two shall be chosen by the stockholders of said company. Said directors shall appoint one of their number president. Authority of board of public works to transfer road to county. Management of road.

2. It shall be lawful for said board of directors to receive subscriptions to an amount not exceeding eight hundred dollars, to be divided into shares of five dollars each, as an additional stock of said company. Said board of supervisors, in behalf of said county, may subscribe for one-half of said stock, and levy the amount on the taxable property of said county; and it shall regulate the tolls to be taken on said road, not exceeding the rates now fixed by law. Additional stock. Subscription by county. Tolls.

3. The tolls collected on said road, after payment of expenses and repairs, shall be applied to the redemption of said stock so subscribed by said board of supervisors, by payment of the amount thereof with interest, and afterwards to the payment of the residue of said additional stock. Application of tolls.

4. In all other respects not inconsistent with this act, said company shall be regulated by the existing laws of this state relating thereto, with the powers and subject to the restrictions of said laws. Government of company.

CHAP. 25.—An ACT declaring the Meathouse Fork of Middle Island Creek, in the county of Doddridge, a Public Highway.

Passed February 29, 1864.

Be it enacted by the Legislature of West Virginia:

Points named.

1. The Meathouse Fork of Middle Island creek, in the county of Doddridge, is hereby declared a public highway from its mouth up to the mouth of Lick Run, for the purpose of floating saw-logs and other timber.

Mill-dams and water gaps.

2. No mill dam or water gap now existing, nor any water gap that may be hereafter erected on the same principle, between the two points named in the preceding section shall be deemed an obstruction to the use of said highway.

CHAP. 26.—An ACT imposing Taxes.

Passed February 29, 1864.

Be it enacted by the Legislature of West Virginia:

The taxes on the persons and subjects required by law to be listed or assessed shall be yearly as follows:

Land.

On tracts of land and lots with the improvements not exempted from taxation, thirty cents on every hundred dollars value thereof.

Personal property.

On all the personal property, money and credits required by law to be listed and not exempt from taxation, thirty cents on every hundred dollars value thereof.

Schools.

There shall also be levied yearly on the assessed valuation of real and personal property, ten cents on every hundred dollars, for the purposes of free schools, being the tax mentioned in the thirty-seventh section of the act passed December tenth, eighteen hundred and sixty-three, entitled "an act providing for the establishment of a system of free schools."

Capitation.

On every white male inhabitant who has attained the age of twenty-one years, one dollar.

Free negroes.

On every male free negro who has attained the age of twenty-one years, one dollar.

CHAP. 27.—An ACT amending the act to incorporate the Burning Spring Turnpike Company, passed November 16, 1863.

Passed February 29, 1864.

Be it enacted by the Legislature of West Virginia:

1. The first section of the act entitled "an act to incorporate the Burning Spring Turnpike Company," passed November sixteenth, eighteen hundred and sixty-three, shall be amended and re-enacted so as to read as follows:

2. It shall be lawful to open books for receiving subscriptions to an amount not exceeding five thousand dollars, to be divided into shares

of twenty-five dollars each, for the purpose of constructing a graded turnpike road from the mouth of Standing Stone, or from the termination of the Newark and Elizabeth turnpike opposite Elizabethtown in the county of Wirt, to a point at or near the mouth of Burning Spring Run, with the privilege of extending the same to a point opposite the mouth of the west fork of Little Kanawha river, all in the said county of Wirt. New starting point named.

CHAP. 28.—An ACT for the relief of the families of Soldiers of this state enlisted beyond the lines of the Union Army.

Passed February 29, 1864.

Be it enacted by the Legislature of West Virginia:

The sum of five thousand dollars is hereby appropriated, to be expended as the governor may direct, for the support and relief of the families of soldiers enlisted or employed in the service of the United States or of this state from those parts of this state now without the lines of the Union army, where such families are in a suffering condition and relief to the same is not provided from any other source. $5,000 appropriated. To be expended under direction of the governor.

CHAP. 29.—An ACT to exempt a certain amount of Property from Execution or other Process.

Passed March 1, 1864.

Be it enacted by the Legislature of West Virginia:

1. Any husband or parent residing in this state may set apart his personal estate not exceeding two hundred dollars in value, to be exempt from execution or other process. Who entitled to exemption. Personal estate.

2. When a debtor claims personal estate as exempt by this act, he shall, if it be demanded, deliver to the officer holding the execution or other process a list by separate items of the property so claimed. List of same. If the creditor, his agent or attorney demand an appraisement thereof, two disinterested householders of the neighborhood shall be chosen, one by the debtor and the other by the creditor, his agent or attorney, and these two, if they cannot agree, shall select a third; but if either party fail to choose an appraiser, or the two having disagreed, fail to select a third, or if one or more of the appraisers fail to act, the officer shall fill the vacancy. Appraisement.

3. The appraisers shall forthwith proceed to make a list by separate items of the personal estate selected by the debtor to the value of two hundred dollars as near as may be, affixing to each item the value they may agree on, and annexing to the list their affidavit to the following effect: "We solemnly swear that to the best of our judgment, the above is a fair cash valuation of the property therein described;" which affidavit shall be signed by two appraisers at least, and be certified by some person authorized to administer oaths. Appraisers' affidavit. The list shall Delivery of list.

be delivered to the officer holding the execution or other process, and be by him annexed to and made part of his return, and the property therein specified shall be exempt from levy and sale, and the other personal estate of the debtor remain subject thereto.

Appraisers' fees.

4. The appraisers shall each be entitled to fifty cents, to be paid by the creditor if it appear that the property claimed by the debtor as exempt did not exceed two hundred dollars in value; otherwise to be paid by the debtor.

Widow and minor children entitled to benefit of act.

5. After the death of a husband or parent residing in this state, his widow or minor children, or such of them as there may be, may select personal estate of the deceased not exceeding two hundred dollars in value, and hold the same exempt from execution or other process for any debt contracted or liability incurred by the deceased in his life time. But the personal representative or any creditor of the deceased may have the personal estate so selected appraised as prescribed in the last three sections and with like effect; and no greater amount than two hundred dollars of the personal estate of the deceased shall be exempt by virtue of this act; and if during his lifetime, he had himself set apart personal estate to be exempt from execution and other process, the same shall be subject thereto after his death, so far as it is not selected as aforesaid by his widow and minor children, or such of them as there may be.

Laws repealed.

6. The thirty-third and thirty-fourth sections of chapter forty-nine of the code of Virginia, second edition, are hereby repealed.

Real estate.

7. A husband or parent residing in this state may hold as a homestead real estate not exceeding five hundred dollars in value, to be exempt from execution or other process for any debt contracted or liability incurred after the first day of June, eighteen hundred and sixty-four.

Declaration of intent to hold it as a homestead.

8. But no real estate shall be exempt as aforesaid unless it is set forth in the conveyance by which the title is acquired, or in the will devising the same, that it is intended to be held as a homestead by the person to whom it is thereby conveyed or devised; or unless after the title is acquired, such intent is declared by writing, signed and acknowledged for record by the owner, and duly admitted to record in the county wherein such real estate is situated. And such exemption, unless by devise, shall take effect only from the time the deed or writing setting forth or declaring the intent aforesaid is duly admitted to record in the proper county.

Forfeiture of the right of homestead.

9. The acquisition of a new estate of homestead, or the removal from this state of the person who acquired the right of homestead, unless his wife or minor children or some one or more of them continue to reside within the state, shall operate to defeat any right of homestead previously acquired.

Right of homestead not impaired without consent of wife.

10. No instrument of writing shall affect or impair any right of homestead in real estate, unless it be signed and acknowledged by the wife of the owner, if he have one, in the manner in which she may release her dower in real estate, and be duly admitted to record in the proper county both as to such owner and his wife. But any deed or other instrument of writing shall nevertheless have the same effect it would have had if this act had not been passed, as to any title or interest in real estate beyond the right of homestead existing therein.

Deeds, &c., not affected.

Entailment of right of homestead.

11. Upon the death of any person entitled to a right of homestead, the right shall continue for the benefit of his widow and minor children, or such of them as survive him, as follows, that is to say: For the widow until her death or marriage, and for every such child until he or she arrives at the age of twenty-one years or dies; and when the widow dies or marries again, or a child dies or arrives at the age of twenty-one, their right shall pass to the others or other of them as long as there is any one entitled to a right of homestead in the premises. But after the death of the husband or parent by whom the right of homestead was acquired, the persons holding such right may sell and convey the same, and the purchaser, subject to the terms of his contract, shall have the same right to possess and use the premises that the widow and children would have had if such sale had not been made. If there be minor children, such sale and conveyance must be made on their behalf by their guardian, under authority of an order or decree of the proper court; and if some but not all of those interested sell and convey as aforesaid, the purchaser shall have no right to molest or disturb those who have not sold, or to interfere with their possession and use of the premises.

Appraisement where the creditor believes the real estate held is greater than allowed by law.

12. When a judgment creditor or other person having a lien or claim on any real estate in which a right of homestead exists believes the premises held as a homestead to be of greater value than five hundred dollars, he may apply to a justice of the township in which such premises or any part thereof are situated to have an appraisement of the same; and the justice may thereupon cause the persons holding the right of homestead to be notified to appear before him at such reasonable time as he may appoint, to show cause, if they have any, why the application should not be granted. The notice shall be served on the father, if he be found, or if he be not found, on his wife, or if he be dead, on his widow, if there be one living in the state; otherwise on the minor children, or such of them as reside on the premises; but when a minor is so notified, a guardian shall be appointed for him by the justice, to take care of his interests in the matter. The justice, having heard the parties, or such of them as attend, may if he deem it proper and right to do so make an order directing the appointment of appraisers. On such order being made, the applicant shall have the right to appoint one appraiser, the persons holding the right of homestead another, and the justice a third one; but if either party neglect to make such appointment or to notify the justice thereof with-

in twenty-four hours after the order is made, or if any of the appraisers decline or fail to act, the justice shall fill the vacancy. The appraisers shall be sworn to discharge their duties as such fairly and impartially. They shall proceed forthwith to examine the premises, and if they find the cash value thereof to exceed five hundred dollars, they shall, except in the case provided for in the following section, set apart to the person or persons entitled to the right of homestead therein such part thereof, lying compactly and in one body, and of the cash value of five hundred dollars as near as may be, as the person or persons entitled to the right of homestead may select, or as the appraisers, if such selection be not made, shall deem proper; and shall acknowledge for record, and lodge in the office of the recorder of the county, to be recorded, their certificate describing by metes and bounds the parcel of land so set apart for a homestead; the costs of recording which shall be paid by the person or persons holding the said right of homestead. Whenever a portion of the premises is set apart as aforesaid, the residue shall be subject to the claims of creditors and others as other real estate.

Proceeding in case of excess.

13. If the appraisers find the cash value of the premises to exceed five hundred dollars, and be of opinion that the same cannot be divided without great injury to the interests of the parties, they shall make and sign a certificate of the valuation and deliver the same to the justice; and the persons holding the right of homestead may, within three months after the certificate is so delivered, pay to the party on whose application the appraisement was ordered the amount justly due him, or the excess over five hundred dollars of the valuation so certified; and on such payment being made, all the rights which the applicant had immediately before such payment against the premises shall be transferred to and vested in the persons so paying; and the rights so transferred and vested shall be exempt from execution or other process for twelve months thereafter, and after that time shall be liable to the claims of creditors.

Payment of excess by debtor.

14. But if the said excess, or the amount justly due the applicant, be not paid as aforesaid, then the real estate in which such right of homestead exists may be sold in any case in which it might be sold if no right of homestead existed therein, and in the same manner; and out of the proceeds of the sale five hundred dollars shall be paid to the persons holding the right of homestead, to be held by them exempt from execution or other process for twelve months thereafter.

Failure to make such payment.

15. The appraisers acting under the last three sections shall be entitled to seventy-five cents each for their services. They shall make return of their proceedings to the justice, and if it appear that the real estate in question is not of greater value than five hundred dollars, the justice shall render judgment for costs against the person who applied for the appraisement, otherwise judgment shall be rendered in his favor for costs.

Appraisers' fee.

Their return.

Costs.

16. The circuit court, on motion of any person aggrieved thereby, may for good cause shown set aside any appraisement made under this act, and in such case may order a new appraisement to be made and returned as it shall direct, and may appoint appraisers for that purpose, and make such order respecting the costs of the proceeding in court or before the justice as it may deem proper and just.

New appraisement by order of circuit court.

17. No exemption under this act shall affect or impair any prior lien on any real or personal estate, or any claim for the purchase money thereof, or for work and labor performed in a family as a domestic; nor shall any thing in this act contained exempt any property from taxation or from sale for taxes.

Certain claims against real estate not affected by this act.

18. If any real estate in which a right of homestead exists be subject to liens having priority to such right of homestead, only the value thereof over and above such liens shall be included in the appraisement; and when property is sold to satisfy such prior liens, the persons holding the right of homestead shall be entitled to receive five hundred dollars, if so much there be, out of the surplus remaining after paying the said liens, and to hold the amount so received exempt from execution or other process for twelve months thereafter.

Appraisement and sale of real estate under prior liens.

CHAP. 30.—An ACT legalizing the County Levy of Morgan county, made for the year 1863.

Passed March 1, 1864.

Be it enacted by the Legislature of West Virginia:

The county levy made by the county court of Morgan county for the year eighteen hundred and sixty-three is hereby legalized.

CHAP. 31.—An ACT to authorize Suits in Lewis county in cases heretofore cognizable in the Courts of Braxton county.

Passed March 1, 1864.

Be it enacted by the Legislature of West Virginia:

1. Any action at law or suit in equity which according to the one hundred and sixty-ninth chapter of the Code of Virginia, second edition, might be brought in the county of Braxton against a debtor who resides without but has estate or debts due him within this State, may be hereafter brought in the county of Lewis: but nothing herein contained shall be construed to affect any provision of law for the limitation of actions or suits.

What suits may be transferred.

2. No jury shall be called or impannelled in any action or suit brought in the county of Lewis by virtue of this act, until and unless the plaintiff pay to the clerk of the court twelve dollars to defray jury costs; which sum the said clerk shall pay into the treasury of said

Jury forbidden unless plaintiff pay costs in advance.

county of Lewis, and if judgment be rendered for the plaintiff shall tax the same in the costs to be recovered by him. If judgment be rendered against the plaintiff, no jury costs shall be taxed against him if he has paid the sum of twelve dollars to the clerk as aforesaid.

CHAP. 32.—An ACT to amend and re-enact the first and third sections of the Act passed February 4, 1863, entitled "An Act to incorporate the Little Kanawha Navigation Company."

Passed March 1, 1864.

Be it enacted by the Legislature of West Virginia:

Sections first and third of the act entitled "An Act to incorporate the Little Kanawha Navigation Company," passed February fourth, eighteen hundred and sixty-three, are hereby amended and re-enacted so as to read as follows:

Names of commissioners.

"1. It shall be lawful to open books under the superintendence of John V. Rathbone, R. Van Winkle, James Cook, J. H. Camden, Moses Kinchloe, Daniel Wilkinson, E. C. Hopkins, Jonathan Weaver, Charles H. Chattuck, and James A. Williamson, or any three of them, at Parkersburg, in the county of Wood, Newark, Elizabeth and Rathbone, in the county of Wirt, for receiving subscriptions to the capital stock of the company hereby incorporated for the purpose of improving the navigation of the Little Kanawha River and its branches. The said commissioners shall, before opening the books for subscriptions as aforesaid, give ten days' notice of the time and place of opening the said books, and shall keep the same open for subscriptions for five days."

Places for receiving subscription.

Purpose of company.

Notice of time for opening books.

Powers of company.

"3. The said company shall have power to improve the navigation of said river and of Hughes' river, by removing any or all of the dams or any other obstructions now existing to the navigation of said rivers, or either of them, or by locks, dams, sluices, canals, or by other usual modes of improvement, or by a combination of any two or more of them. They shall commence their said improvement at such point at or above the mouth of said river as the said company shall deem advisable, and prosecute the same towards the head, so far as it may be deemed practicable, or the resources will permit, and may in like manner improve Hughes's river so far up the same as they may deem proper, when their main improvement has reached the mouth thereof. They may enter and condemn lands for the purposes of their improvements, under the provisions of the said fifty-sixth chapter of the Code of Virginia, and shall have the benefit of all and every act declaring the said rivers navigable highways; and when the said improvement shall have been completed from Rathbone, in the county of Wirt, to the Claysville dam, in Wood county, the said company shall have power to charge and receive for the transportation of crude or refined oils a toll not exceeding ten cents per barrel of forty gallons, or the like sum for the same number of gallons if transported in any other man-

Manner of prosecuting work.

Authority to improve Hughes' river.

And to condemn lands.

Rates of tolls.

ner than in barrels; and for empty oil barrels the sum of two and one-half cents, and four cents for each one hundred pounds of freight other than oil, oil barrels, lumber, staves, grain, and all products of the farming community; and for all freights for which no tolls have been specified herein such rates as shall from time to time be prescribed by law or fixed by the board of public works; and a greater rate of toll may be fixed by law or by the board of public works for the transportation of crude or refined oils, or for empty oil barrels, than the amount fixed in this section. The said company shall be required to complete their improvement from the Claysville dam aforesaid to the mouth of the Kanawha river at Parkersburg, before the first day of November, eighteen hundred and sixty-five, or forfeit the right to collect the tolls specially provided for in this act."

Condition imposed.

CHAP. 33.—An ACT to amend the law concerning Insurance and Express Companies.

Passed March 2, 1864.

Be it enacted by the Legislature of West Virginia:

Returns to be made to auditor.

1. Every domestic insurance or express company, and every person acting in this state as principal agent of any foreign insurance or express company, shall semi-annually make returns to the auditor as follows:

When made.

2. The said returns shall in all cases be made within twenty-one days after the first days of February and August in every year. If made by or on behalf of an insurance company, domestic or foreign, they shall show the amount of premiums on all insurances made or renewed on behalf of such company within this state during the six months immediately preceding the said first day of February or August, including as well the premiums uncollected as those which have been paid. If made by or on behalf of an express company, they shall show the amount of receipts and uncollected charges and freights accruing to it on account of money, goods and merchandise forwarded or carried within this state during the said six months. If such returns be made by or on behalf of a domestic company, they shall be verified by the affidavit of its president, secretary or principal officer; and if made on behalf of a foreign company, by the affidavit of the person acting as its principal agent in this state.

What they shall show.

How verified.

State tax.

3. At the same time the return is made to the auditor as aforesaid, the company or person making such return shall pay into the treasury of the state a tax of three per cent on the amount so returned.

Failure to make returns.

4. Every company or person hereby required to make return or payment as aforesaid, who shall fail to do so, shall forfeit not less than one hundred nor more than one thousand dollars for every such offense; and it shall be the duty of the auditor forthwith to cause suit to be instituted for the recovery thereof. But if such return and pay-

Exemption.

ment be made in conformity with the provisions of this act, the said company shall be exempt from the operation of the forty-ninth section of the act passed December 3, 1863, entitled "an act to provide for the assessment of taxes," and shall not be liable to pay any county levy or school tax, or any other state tax than that hereby imposed: Provided, that this act may be altered or repealed at the pleasure of the legislature.

Foreign companies forbidden to act

5. No foreign insurance or express company shall, within this state, after the first day of April next, make or renew any contract of insurance, or undertake to forward or carry any money, goods or merchandise, until it has complied with the following provisions of this act:

Without first appointing an attorney.

6. Every such foreign insurance or express company shall, by power of attorney, appoint some person residing in this state its attorney, who shall accept service of all lawful process and notices against such company in this state; and if required by the adverse party, cause an appearance to be entered in the name and on behalf of such company in any suit or motion against it which may be instituted in this state. And by the same instrument, the company shall consent and agree that service of any process or notice against it in this state on the said attorney shall have the same effect as if it were duly served on the company.

Regulations concerning power of attorney.

7. Such power of attorney duly acknowledged and authenticated, shall be filed by the company in the office of the secretary of the state.

8. As long as any liability of the company in this state remains unsatisfied, no such power of attorney shall be revoked until after a like power to some other person residing in this state has been filed in the office of the said secretary; and when any such attorney dies or resigns, the company shall immediately make a new appointment and file the evidence thereof as aforesaid, until all its liabilities in this state are discharged.

9. A copy of a power filed in the office of the secretary of the state as aforesaid, certified by him under his hand and the less seal of the state, shall be received in all courts and places as *prima facie* evidence of the execution and contents of such instrument; and he may charge to the person demanding such copy a fee at the rate of fifteen cents for every hundred words; but no tax or fee shall be charged for affixing the seal thereto.

Service of process, &c., on attorney.

10. Service of process and notices upon such attorney shall be deemed equivalent to service on his principal.

11. If any foreign insurance or express company, without complying with the fifth, sixth, seventh and eighth sections of this act, make or renew any contract of insurance, or undertake to forward or carry any

money, goods or merchandize within this state, after the first day of April next, the contract or undertaking shall nevertheless be valid, but the agent or officer acting in the matter in this state on behalf of such company shall forfeit not less than twenty nor more than two hundred dollars for every such offence. Penalty.

12. Every insurance or express company which has been or shall be incorporated by any act of the General Assembly of Virginia in force within this state, or under and pursuant to the Act of the Legislature of this state passed October 26, 1863, entitled "An act providing for the formation of corporations and regulating the same," shall be deemed a *domestic* company within the meaning of this act; and every other insurance or express company, a *foreign* company. Definition of "domestic" and "foreign."

13. The eighth section of the "Act concerning licenses," passed November 28, 1863; the fifty-fifth section of the "Act to provide for the assessment of taxes," passed December 3, 1863; the sixteenth and seventeenth sections of the "Act prescribing taxes on licenses" passed December 7, 1863; and the twenty-third and following sections of chapter thirty-nine of the Code of Virginia, second edition, are hereby repealed. Laws repealed.

CHAP. 34.—An ACT to fill Vacancies in county and township Offices.

Passed March 2, 1864.

Be it enacted by the Legislature of West Virginia:

1. When a vacancy exists in the office of the clerk of the circuit court, recorder, sheriff or prosecuting attorney of a county, the same shall be filled for the unexpired term thereof at the next annual election thereafter. In the meantime, if deemed necessary, the judge of the circuit to which the county belongs may fill the office by temporary appointment, to expire when the person so elected to said office shall be duly qualified to act. In what offices vacancies may be filled by circuit judges; When a vacancy exists in the office of surveyor of lands, assessor or treasurer of a county, or justice or constable of a township, the same shall be filled for the unexpired term thereof at the next annual election thereafter. In the meantime, if deemed necessary, the board of supervisors of the county may fill the office by temporary appointment, to expire when the person to be elected to said office, shall be duly qualified to act. In what by the boards of supervisors. And when a vacancy exists in the office of supervisor, township clerk, overseer of the poor, township treasurer, inspector of elections, or surveyor of roads, the same shall be filled by appointment for the unexpired term thereof, to be made by the supervisor, township clerk, and justice or justices, or by any two of them. Who may fill vacancies in township offices. The bond required by law to be given by the officer so appointed, if by the judge of the circuit, shall be in such penalty and with such approval as he may direct; if by the board of supervisors, said bond shall be in such penalty and with such approval as said board may direct; and if he be a township officer, said bond shall be in such penalty and with such approval, as the officers making the appointment, or any two of them, may direct. Bonds.

Law repealed.

2. Sections eleven, forty-six and forty-seven of the act entitled "An Act to regulate elections by the people," passed November 13, 1863, and all other laws inconsistent with this act, are hereby repealed.

CHAP. 35.—An ACT to incorporate the West Virginia Central Railway Company.

Passed March 2, 1864.

Be it enacted by the Legislature of West Virginia:

Names of corporators.

1. James H. Brown, Frederick Walker, John Slack, sr., Sydney M. Campbell, John R. McCutchen, Ellis Hyre, William Waggy, John Bowyer, William H. Shaw, Stephen Comstock, John Gilmore, J. P. B. R. Smith, Matthew Geary, Henry G. Chapman, G. Parker, Thomas J. Farnsworth, David S. Haselden, O. B. Loudin, Cyrus Kittle, Isaac Baker, Waldo P. Goff, Luther Haymond, L. E. Davidson, Harmon Sinsel, Jesse Teter, Peter Zinn, Spencer Dayton, William B. Crane, James W. Brown, Reuben Morris, Smith Crane, James H. Manown, Joseph Brown, William G. Brown, William B. Zinn, Elisha M. Hagans, Marcellus B. Hagans, Harrison Hagans, William Hagans, William Frey, Henry C. Hagans, Joseph H. Gibson, I. M. Harshbarger, Thomas Scott, Isaac McGrew, John Harrader, Harrison Spurgin, W. Cuppett, Jesse Spurgin, Samuel Fike, Joseph N. Miller, Samuel E. Crane, Simon Cameron, Thomas A. Scott, Francis H. Peirpoint, Lucian A. Hagans, M. A. Sanner, H. L. Holbrook, John Hanna, Moses A. Ross, J. D. Roddy, W. J. Baer, J. Weller, and their associates, successors and assigns, and all who shall become stockholders, when ten thousand shares of the capital stock shall have been subscribed as hereinafter provided, are hereby made a body politic and corporate, by the name, style and title of the West Virginia Central Railway Company: Provided, said subscription shall have been made, in good faith, within three years after the passage of this act.

Style of company

Proviso.

Route prescribed

2. The said company is hereby authorized to construct a railway from the Pennsylvania line, near Joseph Carroll's, in Preston county, by the way of Brandonville, the mouth of Muddy Creek and near Kingwood, in the aforesaid county, the junction of Three Fork and Raccoon creeks, in the county of Taylor, Buckhannon, in the county of Upshur, Charleston, in the county of Kanawha, and thence to the mouth of Sandy river, in the county of Wayne, with the right to construct a branch from Charleston, in the county of Kanawha, to the Ohio river at Point Pleasant, in the county of Mason, subject to all the rights and privileges of this act, and to provide everything necessary for convenient transportation on the same. If after the organization of the company herein provided for it shall be ascertained, by surveys or otherwise, that the purposes of the company can be better attained by a change of route, the said company are hereby authorized to change the location of said road so as to commence anywhere on the Pennsylvania line in the county of Preston or Monongalia, and

Authority to construct branch

Change of route allowed under certain circumstances.

extend the same up any of the streams of the Monongahela river, or elsewhere, to the waters of Elk river; thence by way of Charleston, to the Kentucky line.

Capital stock.

3. The capital stock of said company shall be five millions of dollars, divided into shares of fifty dollars each; and books may be opened by the said corporators, or any three of them, to receive subscriptions to the said capital stock, within two years after the passage of this act, at such places as said corporators, or any three of them, may designate.

Time allowed for opening books.

Company subjected to provisions of code of Virginia.

4. The said books shall be opened and the subscriptions received in the manner prescribed by the code of Virginia, second edition, prescribing general regulations for the incorporation of railroad companies. The said company shall be subject to all the provisions and liabilities and entitled to all the benefits of the aforesaid code, especially such as are specified in chapters fifty-six, fifty-seven and sixty-one thereof, and of all other general laws now in force relating to railway companies, except so far as the provisions of this act are or may be inconsistent therewith.

Authority to increase capital

5. If the capital stock of said company shall be insufficient for the purposes of this act, the said company shall have power and are hereby authorized to increase the same by the addition of as many shares as may be deemed necessary; and said company shall have power to borrow money, to accept and receive donations in lands, money, or other thing, from the congress of the United States, or from other sources, for the purpose of carrying on the object of this act, and to issue proper certificates or evidences of all loans made by it, and to pledge the property of the company for the payment of the same and the interest that may accrue thereon; and the said company shall be required to commence the construction of their said railway within five years from the passage of this act, and shall finish one-fourth thereof within ten years from the time of commencement.

And to borrow money and receive donations.

Condition imposed as to commencement and progress of the work.

Authority to issue bonds.

6. The president and directors of the said company, or a majority of them, shall be and are hereby authorized to make and execute bonds or certificates of indebtedness, under the seal of the said company, for such sum or sums, and payable at such time or times, and to sell and dispose of the same on such terms, as to the said president and directors may seem proper: Provided, that nothing herein contained shall be taken to authorize the said company to issue anything in the nature of a bank-note or other paper to be used for circulation as a currency.

Proviso.

Code of Virginia construed.

7. So much and such parts of the code of Virginia, hereinbefore recited, or of any other act or acts, as may be inconsistent with any of the provisions of this act, shall be held not to apply to the company hereby incorporated, so far as the same may affect the charter granted by this act.

Commencement and equipment of the sections of road north and south of B. & O. R. R.

8. The construction of that portion of said railway which lies north of the line of the Baltimore and Ohio railroad shall be commenced simultaneously with that portion thereof commencing at said Baltimore and Ohio railroad and extending southwardly therefrom to Charleston, and shall when completed be simultaneously equipped for the transportation of freight and passengers.

Subscription by state by transfer of interest in C. & O. R. R.

9. It shall be lawful for the board of public works to subscribe on the part of the state to the capital stock of the West Virginia Central Railway Company to the amount of the value, and to be paid for in the transfer by said board, of all the work or works and improvements made by the state of Virginia on state account on that portion of the Covington and Ohio railroad from the town of Charleston, in the county of Kanawha, to the terminus of the line of the location of the Covington and Ohio railroad, westward. The amount and value of said work and improvements, if not agreed upon by the board of public works and the West Virginia Central Railway Company, shall be ascertained by two disinterested engineers, to be selected for that purpose, one of whom shall be selected by the board of public works and one by the West Virginia Central Railway Company; which engineers in case of disagreement shall choose an umpire, whose valuation and determination in the premises shall be final, unless good cause be shown against their award.

Mode of ascertaining value of such interest.

State made a stockholder.

10. In the event of the subscription by the board of public works to the said stock as proposed, and the organization of the West Virginia Central Railway Company in pursuance of this act, the state shall be a stockholder in said company to the extent of the ascertained value of said work and improvements by said engineers.

Act repealed.

11. The act entitled "an act to incorporate the Elk River Railroad Company," passed January thirteen, eighteen hundred and sixty-two, by the general assembly of Virginia, is hereby repealed. Nothing in the fifth section of the act passed by the general assembly of Virginia, February thirteenth, eighteen hundred and sixty-two, entitled "an act to incorporate the Charleston and Winchester Railroad Company," shall be construed to interfere with the provisions of this act.

Act construed.

Reservation by legislature.

12. The legislature reserves the right to alter or repeal this act; but such alteration or repeal shall not affect or impair the right of the creditors of the corporation to have the property and assets thereof applied in discharge of their respective claims, or of the stockholders to have the surplus which may remain after providing for the debts and liabilities of the corporation, distributed among themselves according to their respective interests.

CHAP. 36.—An ACT to amend the act entitled "An act providing for the establishment of a system of Free Schools."

Passed March 2, 1864.

Be it enacted by the Legislature of West Virginia:

1. The second and eighteenth sections of the act entitled "an act providing for the establishment of a system of free schools," passed

December tenth, eighteen hundred and sixty-three, is hereby amended so that the first election of officers therein provided for shall take place on the fourth Thursday of April next ensuing the passage of this act; and the commissioners and superintendents then elected shall qualify and enter upon the duties of their offices, at the same time with other township officers.

First election of school commissioners and county superintendents.

2. The concluding clause of section one and the whole of section fifty-two are hereby repealed; and the city of Wheeling and the parts of townships connected therewith are hereby exempted from the operation of the act aforesaid, but shall be subject to the school law now in force in the city of Wheeling, and shall be required to make to the county superintendent of Ohio county the report required by the seventh clause of the seventh section of the act aforesaid, and likewise subject to the state tax of ten cents on the hundred dollars imposed by the thirty-seventh section of said act, and entitled to receive the proper distributive share of all State funds for the support of free schools as provided in the act aforesaid.

City of Wheeling

CHAP. 37.—An ACT to empower the Assessor to re-assess certain Lands in Pleasants County.

Passed March 2, 1864.

Be it enacted by the Legislature of West Virginia:

1. It shall be the duty of the assessor for Pleasants county, in revising, correcting and making out his land book for the year eighteen hundred and sixty-four, to examine all lands and town lots entered therein, or such as he may find omitted, and in all cases where he may find any land or town lots not assessed or that may in his opinion be assessed below their value, to re-assess the same and put such value thereon, including the buildings thereupon, as he may deem just and proper, and to correct his land book accordingly.

Authority conferred on assessor

2. Any person feeling himself aggrieved by any such re-assessment may, at any time before such land book is made out and certified, apply to the assessor to have the valuation corrected; and it shall be the duty of such assessor, if he is satisfied that he has made any unfair valuation to correct the same. And any person feeling himself aggrieved by any such re-assessment may, within twelve months after the land book is certified, apply to the board of supervisors of the county to have the same corrected; and it shall be the duty of the board on such application to correct any unfair valuation.

Remedy of aggrieved parties.

CHAP. 38.—An ACT for the Encouragement of Foreign Emigration to this State.

Passed March 3, 1864.

Be it enacted by the Legislature of West Virginia:

1. The governor is hereby authorized to appoint a responsible and competent person for the purpose of soliciting and organizing foreign

Commissioner of emigration.

emigration to this State, the same be styled a commissioner of emigration for West Virginia.

Commissioner's duties.

2. It shall be the duty of such commissioner, so soon as the governor may direct, to connect himself by correspondence with the principal sources of emigration in Germany, Austria Switzerland, Sweden, Great Britain, and to do everything that may be proper and necessary to secure the greatest possible publicity to the political and social condition of our State, the nature of her climate, soil, geographical features and advantages, her agricultural, mineral and manufacturing resources, her public improvements, and every other local information of interest and utility to the emigrant. To this effect he shall prepare and have translated into one or two of the principal languages of Europe a pamphlet with lithographic maps of the State, containing not less than sixteen pages of text descriptive of our State, and circulate the same in said countries to the amount of fifteen thousand copies. He shall also connect himself for the furtherance of his mission with the commissioners and superintendents of emigration that may be appointed under acts of congress and with the American consulates and commercial agencies in said countries, and with the various emigrant aid, protection and transportation societies, private and official, therein established, as also with the civil authorities and organs of publicity whose action or influence may be available for the promotion of the ends of his mission; and further to secure in every principal centre of emigration, and seaport on the routes of emigration, intelligent and obliging correspondents, who may supply him with every desirable information and receive from him the necessary instructions for the continuous inducement of foreign emigration to our State.

Commissioner's duties.

3. And it shall be the duty of said commissioner to forward to the governor, to be by him laid before the legislature at its next session, a full report of his transactions, stating all the means and channels employed by him in the accomplishment of his mission, the results attained or expected to be attained through his efforts, the statistics of emigration and other kindred information calculated to suggest further necessary legislation on the subject.

Authority of governor to prescribe further duties.

4. And the governor is hereby authorized to prescribe to said commissioner any further duties in his judgment necessary efficiently to carry out the purposes of this act, including a visit to the principal sources of emigration in Europe, in case the expenses thereof are defrayed by subscriptions on the part of private individuals, associations or corporations having as one of their objects the encouragement of emigration to this State, including the execution of a bond for the faithful performance of his duties and the proper use of the funds entrusted to him to defray the expenses of his office.

Commissioner's bond.

Further authority of governor.

5. And the governor is hereby authorized to make such arrangements with the proper persons and authorities at the port of Balti-

more, and with the Baltimore and Ohio railroad company, as may be necessary to encourage the transportation of emigrants intending to travel through or locate in this state, in first class emigrant ships direct from the seaports of Europe to the port of Baltimore, and to secure to the emigrant during his passage and upon and after his landing all the aid, protection and instructions he may need for his guidance and safety, upon principles equally beneficial to the emigrants, to the port of landing, the line of transit and the state where he may select his residence: Provided, that no additional expense accrue to the state under this section.

CHAP. 39.—An ACT appropriating the Public Revenue for the fiscal year 1863-4 and a part of the fiscal year 1864-5.

Passed March 2, 1864.

Be it enacted by the Legislature of West Virginia:

What money is appropriated.

1. All appropriations heretofore made and unexpended, and any and all money in the treasury not otherwise appropriated at the close of the fiscal year ending September thirtieth, eighteen hundred and sixty-four, as well as all money that shall come into the public treasury from and after the thirtieth day of September, eighteen hundred and sixty-four to the first day of January, eighteen hundred and sixty-five, shall constitute a general fund, and be appropriated for the fiscal year eighteen hundred and sixty-three and four, and for the months of October, November and December of the fiscal year eighteen hundred and sixty-four and five, as follows:

For the fiscal year 1863-4 and part of 1864-5.

For legislature.

For expenses of the legislature for the session commencing on the nineteenth day of January, eighteen hundred and sixty-four, including pay of officers, printing, stationery, rent of Linsley Institute from the first day of Januaay, eighteen hundred and sixty-four to the first day of January, eighteen hundred and sixty-five, and repairs made to said Institute and premises, fifteen thousand five hundred dollars.

Judiciary.

For salaries of judges of the supreme court of appeals and judges of the circuit courts, twenty-six thousand dollars.

For the salary ef the clerk of the supreme court of appeals, one thousand dollars.

For contingent expenses of courts, six thousand dollars.

For criminal charges, including convicts in jails and their removal, witnesses', jurors', and jailors' fees, fifteen thousand dollars.

Lunatics.

For expenses of lunatics in asylums in other states, in this state in jail and other places, ten thousand dollars.

Contingent expenses of executive offices.

For contingent expenses of auditor's office, including stationery, books, printing, postage and fuel, three thousand dollars.

For contingent expenses of office of the secretary of the state, three hundred dollars.

For contingent expenses of treasurer's office, two hundred dollars.

For contingent expenses of adjutant general's office, three hundred dollars.

For contingent expenses of quartermaster general's office, two thousand dollars.

Salaries of executive officers. For salary of governor, two thousand dollars; auditor, one thousand five hundred dollars; treasurer, one thousand four hundred dollars; secretary of the state, one thousand three hundred dollars; and attorney general, one thousand dollars.

For salary of adjutant general, twelve hundred dollars.

For salary of quartermaster general, one thousand dollars.

Public printer. For public printer five thousand dollars.

Clerks in executive offices. For salary of clerk in adjutant general's office, six hundred dollars.

For salaries of clerks in the auditor's office, sixteen hundred dollars.

Vaccine agent. For salary of vaccine agent, one hundred dollars.

For codifying laws. For Daniel Lamb, on contract for codifying laws, two thousand dollars.

Janitor for executive offices. For janitor and guard to the executive offices, four hundred dollars.

Civil contingent fund. On account of civil contingent fund, ten thousand dollars.

Military expenditures. For procuring arms, &c., under act of July, eighteen hundred and sixty-three and the joint resolution, adopted on the seventeenth day of September, eighteen hundred and sixty-three, sixty thousand dollars.

Commissioners of revenue. To pay commissioners of the revenue, three thousand dollars.

Buffalo Bridge. To pay appropriation to construct a bridge across Buffalo creek, in Marion county, under act of November eighteenth, eighteen hundred and sixty-three, eighteen hundred dollars.

Road in Hardy. To pay appropriation to construct a road in the county of Hardy, under act of September tenth, eighteen hundred and sixty-three, one thousand dollars.

Removal of sick and wounded soldiers. To pay appropriation to remove sick and wounded soldiers, under act of October first, eighteen hundred and sixty-three, two thousand dollars.

Militia claims. To pay appropriation under act of November nineteenth, eighteen hundred and sixty-three, for the payment of certain militia claims allowed by regimental courts, six thousand dollars.

Support of blind. To pay appropriation for the education and support of the blind, under act of December first, eighteen hundred and sixty-three, two thousand dollars.

West Va. hospital for the insane. To continue the construction of the West Virginia Hospital for the Insane, six thousand dollars.

W. H. Copley. To W. H. Copley, of Wayne county, for expenses in taking care of record of said county, fifteen dollars.

Clerk of House. To the clerk of the house of delegates, for services in recess, two sessions, one hundred and fifty dollars.

Act construed. 2. Nothing in this act shall be construed to repeal the appropriation of two thousand and twenty-eight dollars and forty-eight cents, made by act of fifth of August, eighteen hundred and sixty-three, to carry into effect the ordinance of the late constitutional convention, to repeal any special appropriation made to any individual or individuals named in the act of December seventh, eighteen hundred and sixty-three or for the holding any election for which an appropriation was made under said act, or to affect the provisions of the act passed December third, eighteen hundred and sixty-three, entitled "an act concerning superintendents and commissioners of schools, and the distribution of the capitation tax for eighteen hundred and sixty-one, eighteen hundred and sixty-two, and eighteen hundred and sixty-three."

CHAP. 40.—An ACT for the Incorporation of Cemetery Associations.

Passed March 2, 1864.

Be it enacted by the Legislature of West Virginia:

Manner of organizing.

1. Any number of persons residing in this state, not less than five, who are desirous to form an association for the purpose of procuring and holding lands to be used exclusively for a cemetery or place for the burial of the dead, may meet and appoint a chairman and secretary and proceed to form an association by determining on a corporate name by which the association shall be known, the number of trustees, which shall be not less than three, and their term of office.

Certificate of organization.

2. The chairman and secretary of the meeting shall, within seven days after the said meeting, make a written certificate thereof, and acknowledge the same before an officer authorized to take acknowledgment of conveyances, in the county where the said meeting shall be held; which certificate shall state the names of the associates who attended said meeting, the corporate name of the association determined upon by the meeting, the number of trustees fixed to manage the concerns of the association, and the day fixed for the annual election of trustees; which certificate it shall be the duty of the chairman and secretary of such meeting to cause to be recorded in the recorder's office for the county in which said meeting was held, in a book to be appropriated to the recording of certificates of incorporation.

Acknowledgment and record of same a requisite.
Management of association.

3. Upon such certificate, duly acknowledged as aforesaid, being recorded, the association therein mentioned shall be deemed legally incorporated. The affairs of said association shall be managed by the trustees thereof; who shall, from their number, appoint a president, a vice president, a secretary, and a treasurer; who shall hold their offices during the pleasure of the trustees; and they may require the treasurer to give bond and security for the faithful performance of the duties of his office.

Authority conferred on association.

4. Any association incorporated under this act may take by purchase or devise and hold, within the county in which their certificate is recorded, not to exceed one hundred acres of land, to be held exclusively for a cemetery for the burial of the dead; which land may be subdivided into lots, plats, avenues and streets, as the trustees may deem proper; and a map of each subdivision shall be filed in the recorder's office in the county. After the filing of the said map, the trustees may convey said lots and subdivisions designated on said map, as may be agreed upon, and subject to such conditions as they may

prescribe. The conveyances shall be executed under the common seal of the association, signed by the president or vice president or secretary, and acknowledged by the president or vice president, and shall be recorded; but there shall be no tax paid to the state on such conveyances. The proceeds of such conveyances after paying the original purchase money of the land, and the expenses connected therewith, shall be applied to the care and adornment of the cemetery.

Conveyances of lots exempt from state tax.

Trustees.

5. The trustees of such association shall have the exclusive control and management of the concerns thereof; and all elections for trustees shall be by ballot; but the supervisors of each county may make such regulations in respect to burials in cemeteries or elsewhere as they may judge the public health and decency may require.

Penalties for injuring property of association.

6. Any person who shall wilfully destroy, mutilate, deface or injure, or remove any tomb, monument, grave-stone, building or any other structure, placed in any cemetery of any association incorporated under this act, or any fence, railing, or other work, for the protection or ornament thereof or of any tomb, monument, or grave-stone, or other structure, as aforesaid, or of any plat or lot within such cemetery, or who shall wilfully destroy, cut, break or injure any tree, shrub or plant within the limits of such cemetery, shall be deemed guilty of a misdemeanor; and such offender shall also be liable in action of trespass, to be brought in all such cases in the name of the association, to pay all such damages as shall have been occasioned by his unlawful act or acts. Such money so to be recovered shall by the trustees be applied to the restoration of such property so injured or destroyed.

Exemptions of such property.

7. Property thus held by cemetery associations shall not be liable to be taken in execution or otherwise be sold to pay the debts of the individual owners thereof, and shall be exempt from all public assessment and taxes.

8. This act may be altered or repealed by the legislature.

CHAP, 41.—An ACT providing for the repair of the Walnut Gap Road in Boone and Wyoming Counties.

Passed March 2, 1864.

Be it enacted by the Legislature of West Virginia:

$2,000 appropriated.

1. There is hereby appropriated, out of any money in the treasury not otherwise appropriated, the sum of two thousand dollars, for repairs on the Walnut Gap road, from the mouth of Short Creek, in Boone county, to Elliot Cook's, in Wyoming county. The said repairs shall be completed in six months from the passage of this act, under the superintendence of William Workman and Alfred A. Hagar of Boone county, and Thomas G. Cooke of Wyoming county. These superintendents are hereby authorized to let out said repairs under contract to the lowest solvent bidder, on such day as said superin-

Time for completion of work.

Superintendents.

Their authority.

tendents may designate by advertisement for fifteen days at Boone C. H., Jasper Workman's and Wyoming C. H. Said superintendents are hereby authorized to certify to the auditor from time to time the value of the work done by the contractor or contractors, and draw their warrant for the same, not exceeding four-fifths of the value of the work so certified, until the completion of the whole, at which time they may draw for the full amount. The said superintendents may make such changes in the location of said road as they may deem prudent.

Re-payment of appropriation to State.

2. As soon as the aforesaid counties are organized under the laws of this state, the boards of supervisors thereof shall cause to be laid a levy in different instalments, so as to refund the money to the treasury of this state in three years after the organization beforementioned. And upon the boards of supervisors failing to lay such levy for one year after the organization of said counties, the assessors of said counties shall do the same. The superintendents shall receive two dollars per day for their services.

Superintendents' fees.

CHAP. 42.—An ACT to Punish Treason against the State.

Passed March 3, 1864.

Be it enacted by the Legislature of West Virginia:

In what to consist.

1. Treason against the state shall consist in levying war against it, or in adhering to its enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

Punishment prescribed.

2. Whoever is guilty of treason against the state shall be punished with death or, at the discretion of the jury, by confinement in the penitentiary not less than three nor more than ten years and by the confiscation of his real and personal estate.

Misprison of treason.

3. If any person have knowledge of any treason against the state and shall not, as soon as may be, give information thereof to the governor or some conservator of the peace, he shall be punished by fine not exceeding one thousand dollars, or by confinement in the penitentiary not less than one nor more than five years.

Proviso as to prior offences. Law repealed.

4. Chapter one hundred and ninety of the Code of Virginia, second edition, is hereby repealed: Provided, that all treason against the state and concealments of the same occurring before the passage of this act shall be punished according to said chapter of the said Code.

CHAP. 43.—An ACT to allow Corporations to issue Preferred Stock.

Passed March 3, 1864.

Be it enacted by the Legislature of West Virginia:

Issue of Preferred stock provided for.

1. The stockholders of any corporation now existing in this state, or which may be hereafter formed therein pursuant to law, may, by

By resolution in general meeting. by-law or regulation passed in general meeting, provide for the issue of preferred stock, upon such terms and conditions, and with such stipulations and regulations respecting the preference to be given to such stock in regard to future dividends or otherwise as by the said by-law or resolution they may see fit to prescribe or agree to: Provided, that notice be given by advertisement, to be published at least once a week for four weeks successively in some newspaper of general circulation printed in this state, of the intention to offer such by-law or resolution. Previous notice requisite.

Certificate of resolution to secretary of the state. 2. When any such by-law or resolution is passed, the president or chief officer of the corporation shall forthwith certify a copy thereof to the secretary of this state, who shall record the same in the book kept in his office for recording certificates of incorporation, and may charge therefor a fee at the rate of fifteen cents for every hundred words, to be paid by the corporation. His fee for recording it.

Construction of act. 3. Nothing contained in this act shall be deemed to authorize any corporation to increase its capital stock beyond the amount to which it is now limited by law.

Chap. 44.—An ACT to regulate Allowances to Recorders.

Passed March 3, 1864.

Be it enacted by the Legislature of West Virginia:

For services for which no fee is allowed by law. Every recorder shall be allowed annually, by the board of supervisors of his county, for his services for which no other fee or reward is allowed by law, to be paid out of the county treasury, such sum, not less than twenty-five nor more than one hundred dollars, as the said board may deem reasonable.

Chap. 45.—An ACT to regulate the Tolls of Ferries.

Passed March 3, 1864.

Be it enacted by the Legislature of West Virginia:

Authority conferred on board of supervisors. It shall be lawful for the board of supervisors in any county containing public ferries authorized by law, at one of their annual or special meetings, to establish, increase, diminish and generally regulate, the rates of toll of said ferries, as in their judgment may be necessary; and to cause notices of such rates and charges to be conspicuously posted at each place of landing.

Chap. 46.—An ACT to amend and re-enact the Charter of the Town of Mannington, in Marion County.

Passed March 3, 1864.

Be it enacted by the Legislature of West Virginia:

The charter of the town of Mannington, in the county of Marion, is hereby amended and re-enacted so as to read as follows:

1. The corporate limits and bounds of the town of Mannington shall be as follows; Beginning at a stake in a line of Jeremiah Beatty's; thence north sixteen and a half and east fifty-six poles to a stake; north thirty-six and west forty-seven poles to a white oak; north thirty-seven and west seventy-eight poles to a stake; south ten and a half and west thirty-seven poles to an apple tree; south seventy-two and west one hundred and two poles to a stake; south fourteen and a half and east fifty-six poles to a beech tree; south forty-three and east fourteen poles to a stake; north sixty-two and east twenty-two and a half poles to a small white-oak tree above J. B. Nay's mill; south thirty-eight and east forty-one poles to a linn tree; south thirty-five and east seventy-two poles to a sugar tree on the east bank of Buffalo creek; thence north thirty-four and east thirty-two poles to a rock in the road; north thirty-four and west thirty-four, to a gum tree on a point; thence north thirty and east twenty poles to the place of beginning. **Corporate limits defined.**

2. The officers of said town shall be a mayor, a recorder, and seven councilmen; who shall constitute the town council; a majority of whom shall be a quorum for the transaction of business. **Town officers.**

3. All officers of said town shall, before entering upon the discharge of their respective duties, take and subscribe the oaths required by law. **Their oath.**

4. The mayor, recorder, councilmen and a sergeant shall be elected annually on the first Tuesday in May, by the citizens of said town who are entitled to vote under the constitution and laws of this State, to hold their offices one year thereafter and until their successors are elected and qualified. **Their election.**

5. The mayor shall preside at all meetings of the council when present. He shall have the authority and exercise the functions of a justice within the limits of the corporation and see that all laws, rules and regulations of the town are strictly enforced. All legal process issued by him shall be executed and returned by the sergeant. The mayor shall be a conservator of the peace within the town, shall have power to police the same, and may appoint special police officers for that purpose, when he deems it necessary. It shall be his duty to see that peace and good order are preserved. **Duties and authority of Mayor.**

6. The mayor shall receive for his services an annual compensation to be fixed by the council; but shall have no voice in fixing the same. He shall give such bond for the faithful discharge of his duties and in such penalty as may be approved by the council, the bond to be filed with the books and papers of the town. He may be removed from office by a two-third vote of the council, for incompetence or misconduct in office. **Mayor's compensation.** **Bond.** **And removal.**

7. The bonds of the officers shall be given to and be approved by the council, and be in such penalty as the council may from time to time direct. **Officers' bonds.**

Recorder's duties

8. The recorder shall keep a true and faithful record of the proceedings of the council, shall have charge of the books and papers of the town, shall exhibit monthly to the council a statement of the financial affairs of the town, and perform all other services required of him by the mayor pertaining to his office. In the absence of the mayor, or during a vacancy in that office, the recorder shall perform all the duties of mayor and be vested with all his powers; and for such services shall receive like compensation. He shall receive an annual compensation for his general services, to be fixed and allowed by the council; but shall have no voice in determining the same.

Powers.

And pay.

Powers of council.

9. The council shall have power and authority to levy a tax annually upon all real and personal property within the corporation, not exceeding for any year the state and county tax; but the tan-yard, buildings, stock, and machinery belonging to Ralston, Brown & Company, shall not be taxed for any year more than the rate of the township tax with which they would have been chargeable if their said property had remained without the corporation. The aforesaid levy shall be for the purpose of making necessary improvements within the town. The council may, if they deem it expedient, cause any street or sidewalk, footway or gutter along any street or alley within the town to be paved and kept in repair; and they may enact bylaws, not inconsistent with the constitution or laws of this State, for the government of the town.

Proviso as to tan-yard of Ralston, Brown & Co.

Taxes.

10. All taxes levied by the council shall constitute a lien on the property assessed.

Elections.

11. The council shall be the judge and determine and certify the result of all elections held within and for the town. They shall annually, before the election day, appoint three freeholders, who shall act as inspectors of election and make return of the result to the council.

Duties and powers of sergeant.

12. The sergeant shall collect all taxes, including taxes on licenses, fines, and other income of the town, and account for the same as the council may direct; and shall perform all other duties pertaining to the office of sergeant of a corporation. He shall act as a conservator of the peace, quell all riots, disperse all unlawful assemblies, and arrest and bring before the mayor for trial all disorderly persons. He shall perform the duties of constable in said town and receive the same fees, and be liable under his bond for all money collected by him. He shall have power to take and sell property for all claims placed in his hands for collection as prescribed by law. He shall be the officer of all town elections, shall see that all legal voters are allowed to vote, and shall preserve order at the polls; and shall certify, with the three inspectors of election, to the council, the result of the same, within five days thereafter.

Vacancies.

13. When a vacancy occurs in any of the offices herein provided for, the mayor shall order an election to fill the same, giving five days' notice thereof.

14. Nothing in this act shall be construed to interfere with the rights of the turnpike companies owning roads leading to and through the corporation; but the mayor may make such regulations with said companies, respecting the portion of their roads within the corporation, as he may deem judicious; and the officers of the town in the preservation of law and order shall have jurisdiction over said roads within the town. **Turnpikes within corporation.**

15. The officers provided for within this act shall be first elected within twenty days after the passage of this act, and shall serve until the first Tuesday in May next or until their successors are elected and qualified. **Time allowed for first election.**

16. The provisions of the fifty-fourth chapter of the Code of Virginia, second edition, so far as the same are not inconsistent with this act, shall be applicable to said incorporation. **Law applied.**

CHAP. 47.—An ACT providing for the payment of certain Militia Claims allowed by Regimental Courts.

Passed March 3, 1864.

Be it enacted by the Legislature of West Virginia:

1. The auditor is hereby required to pay all militia claims for services rendered since June twentieth, eighteen hundred and sixty-one, as musician, adjutant or other officer of the line ordered to perform the duty of enrolling, notifying and mustering any company which has no officers, and reporting delinquents in said company, provost marshal and regimental clerk, which have been or shall be in accordance with law allowed by the regimental courts of the several regiments within the bounds of this state, and are duly certified by the regimental clerk, countersigned by the commandant of the regiment and approved by the adjutant general: Provided, that in no case shall the amount to be paid under this act exceed the amount specially appropriated by the legislature for the payment of such claims, and that no regiment in any one year shall be paid a sum exceeding one hundred and ten dollars. **What claims the auditor required to pay.** **Proviso.**

2. That the sum of six thousand dollars for the payment of certain militia claims allowed by regimental courts, appropriated under the act appropriating the public revenue for the fiscal year eighteeen hundred and sixty-three and four and a part of the fiscal year eighteen hundred and sixty-four and five, passed March second, eighteen hundred and sixty-four, be and the same is hereby appropriated for the payment of the militia claims authorized to be paid by this act. **Appropriation diverted.**

3. Chapter one hundred and nine of the acts of the legislature, passed at its first session, is hereby repealed. **Act repealed.**

CHAP. 48.—An ACT supplementary to the Act passed July 28, 1863, entitled "An Act to provide for the Trial of Offences committed in counties in which the Administration of Justice may be interrupted by War or Insurrection."

Passed March 3, 1864.

Be it enacted by the Legislature of West Virginia:

Authority of circuit judge to appoint sheriff.

1. The circuit judge in any county in his circuit, where there has been no sheriff elected and qualified in said county, may appoint a sheriff; who shall hold his office and perform all the duties thereof until a sheriff is elected by the people and qualified according to law. Bond shall be given by the sheriff so appointed, in such penalty as the judge may prescribe, or may be dispensed with if he shall so order.

And by warrant to direct him to arrest offenders.

Commitment of such parties.

2. It shall be the duty of said circuit judge in any such county, by warrant directed to said sheriff, to cause the arrest of any person charged with a felony or misdemeanor committed in said county; and if said person fail or refuse to give bail, if required, he shall be committed to jail for trial at the first term of the circuit court in any county said judge may direct.

Witnesses.

3. The clerk of said last mentioned county shall, as soon as said person is committed, issue process returnable to the first day of said term for the appearance of all witnesses both for the state and the person so charged.

Pay of sheriff.

4. The said sheriff shall receive such compensation for his services in all cases as now provided by law.

JOINT RESOLUTIONS.

[No. 1.] Raising a Committee to wait upon the Governor.

Resolved by the Legislature of West Virginia: That a committee, of two on the part of the senate and three on the part of the house of delegates, be appointed to inform the governor that both houses of the legislature are now organized and ready to receive any communication he may desire to make.

ADOPTED, January 20, 1864.

[No. 2.] In regard to the printing of the Governor's Message.

Resolved by the Legislature of West Virginia: That five thousand copies of the governor's message, and one thousand copies each of the accompanying documents, be printed for the use of the legislature.

ADOPTED, January 20, 1864.

[No. 3.] Concerning Federal Restrictions on Trade and Commerce.

Whereas, The loyal people of West Virginia are being injured by the annoying and oppressive restrictions placed upon trade and commerce under the regulations of the treasury department now in force in said state:

And, whereas, It is the deliberate opinion and conviction of the people of this state, as well as of the military authorities located in the same, that such regulations are not calculated to attain their only legitimate object, namely, the prevention of the passage of supplies to districts within the control of the enemy: Therefore, be it

Resolved by the Legislature of West Virginia: That our senators in congress be instructed, and our representatives be requested, to represent these facts to the proper authorities at Washington, and to use their most earnest efforts to secure such a modification of the trade regulations referred to as will relieve the loyal people of the state from the grievances set forth in these resolutions.

Resolved, That the governor of the state be requested to forward a copy of these resolutions to each of our senators and representatives at Washington.

Resolved, That the governor be authorized to send one or more commissioners to Washington to aid in promoting the objects of these resolutions.

ADOPTED, January 21, 1864.

[No. 4.] Authorizing the Auditor to employ an additional Clerk.

Resolved by the Legislature of West Virginia: That the auditor be authorized to employ an additional clerk, at a salary not exceeding one thousand dollars per annum.

ADOPTED, January 25, 1864.

[No. 5.] Directing the Governor to present a Banner to the Seventh Regiment West Virginia Volunteer Infantry.

Resolved by the Legislature of West Virginia: That the governor be authorized and requested to procure and present to the seventh regiment West Virginia volunteer infantry, a suitable flag with the following inscriptions: "Romney, Oct. 26th, 1861; Bloomery, Feb. 13th, 1862; Harrison's Landing, July 4th, 1862; Antietam, Sept. 17th, 1862; Fredericksburg, Dec. 13th, 1862; Chancellorsville, May 13th, 1863; Gettysburg, July 2d and 3d, 1863; Bristow Station, Oct. 14th, 1863; Locust Grove, Nov. 27th, 1863;" and that the expense be defrayed out of the money appropriated for the contingent expenses of the chief executive office.

ADOPTED, January 25, 1864.

[No. 6.] Fixing a day for electing a State Superintendent of Free Schools.

Resolved by the Legislature of West Virginia: That on Tuesday, the sixteenth day of February next, at eleven o'clock A. M., the senate and house of delegates will proceed to elect a state superintendent of free schools for the state of West Virginia.

ADOPTED, January 27, 1864.

[No. 7.] Authorizing and requesting the Governor to present a Banner to the 4th Regiment West Virginia Volunteer Infantry.

Resolved by the Legislature of West Virginia: That as an evidence of their appreciation of the heroism and valor of the officers and soldiers composing the Fourth Regiment West Virginia Volunteer Infantry, in the battles of Charleston, Vicksburg, Jackson and Mission Ridge, the governor is hereby authorized and requested to present to the said regiment, on behalf of the loyal citizens of this state, a flag, adapted to their arm of the service, with the coat of arms of this state and the following inscription placed legibly thereupon, viz:

"Charleston, W. V., September 13th, 1862; Vicksburg, Miss., May 19th and 22d, 1863; Jackson, Miss., July 9th and 12th, 1863; Mission Ridge, Nov. 25th, 1863."

The expense thereof to be paid out of the contingent fund placed at the disposal of the governor.

ADOPTED, January 28, 1864.

[No. 8.] Requesting the Governor to procure and communicate information respecting measures for the Defense of the State.

Resolved by the Legislature of West Virginia: That the governor be requested to confer with the military authorities, and obtain from them such information as they deem it consistent with the public interest to communicate respecting the measures adopted or contemplated for the defense of West Virginia.

Resolved further, That the Governor, having obtained the necessary information, be requested to inform the two Houses what measures can be adopted by the Legislature to render more efficient the defense of the State.

ADOPTED, January 28, 1864.

[No. 9.] Respecting the Act of Congress for the endowment of Agricultural Colleges.

Whereas, the Legislature of this State, by act passed on the 3d day of October, 1863, accepted the conditions of the act of Congress of July 2, 1862, donating lands to the several states for the endowment of Agricultural Colleges; and

Whereas, in the first section of said act, the desire is expressed on the part of the Legislature that should a doubt arise whether this state is a grantee under the act aforesaid, its provisions should be extended to our State by future legislation on the part of Congress:

Resolved by the Legislature of West Virginia: That our Senators in Congress be instructed, and our Representatives requested, to procure the legislation on the part of Congress requisite to secure to the State of West Virginia an equal participation in the benefits of said act of Congress with the other States of the Union.

Resolved, That the Governor be requested to transmit a copy of these resolutions to each of our Senators and Representatives in Congress.

ADOPTED, January 30, 1864.

[No. 10.] Requiring a report from the Board of Public Works upon the condition of State Roads.

Resolved by the Legislature of West Virginia: That the Board of Public Works be hereby respectfully required, at the next session of the legislature, to lay before that body a report upon the condition of all the roads and turnpikes, of which the State is owner or shareholder, and suggest such legislation as may be needed to render our system of public roads, in all its branches, adequate to the purposes of commerce, travel, and, if necessary, of military strategy.

ADOPTED, February 6, 1864.

[No. 11.] Authorizing the Adjutant General to audit certain Militia Claims.

Resolved by the Legislature of West Virginia: That the Adjutant General be authorized to audit all just claims of the various squads and companies of militia that are or have been in the service of the State, and all expenditures in their behalf, whether their services were ordered by the officials of the State or of the United States, and all unliquidated military claims of the State and of individuals of the State against the United States; and that he be allowed an additional clerk, should he deem it necessary, while so engaged.

ADOPTED, February 9, 1864.

[No. 12.] To provide for distributing the Acts of the first and second sessions of the Legislature.

Resolved by the Legislature of West Virginia; That the two thousand copies of the Acts of the first session of the legislature which by the joint resolution adopted August 1, 1863, were directed to be reserved to be indexed and half bound in the usual manner at the end of the said session, be delivered by the public printer to the Secretary of the State to be by him distributed as follows:

One copy to every judge and clerk of any court of this State;

One copy to every prosecuting attorney, sheriff, assessor, recorder, county treasurer, clerk of board of supervisors, supervisor, and county superintendent of free schools;

To the Governor, Attorney General, Secretary of the State, Auditor, Treasurer, Adjutant General, Quartermaster General, and State Superintendent of free schools, one copy each;

Five copies to the Clerk of the Senate, one for his own use and the others for the use of the Senate; and ten copies to the Clerk of the House of Delegates, one for his own use and the others for the use of the House; and eight copies to each member of this Legislature, one for his own use and the others for distribution among the people;

One copy to every public library in the State, one copy to the West Virginia Hospital for the Insane, and one copy to the editor of every newspaper published in the State;

Three copies to the librarian of Congress, whereof one shall be for the library and one for each House of Congress;

Three copies to the Secretary of State of the United States, one for his own office, one for the President and one for the Attorney General of the United States;

To the judge, clerk, attorney and marshal for the western district of Virginia, one copy each;

One copy to the governor of every other State and of every territory;

To every justice elected and qualified under the laws of this State, one copy bound up with the forms for justices and constables, in conformity with the joint resolution of the Legislature adopted December 8, 1863;

And the Secretary of the State shall cause the residue of the said two thousand copies to be sold at forty cents each, and account for the same to the Treasury.

Resolved further, That there be printed in all two thousand copies of the Acts of the present session, to be indexed, put up in paper covers and delivered to the Secretary of the State as soon as possible after the end of the session, to be distributed by the said Secretary in the manner above specified; except that such of the Acts of this session as are to be furnished to justices shall not have the forms bound up or delivered therewith, and that the residue to be sold and accounted for by the Secretary shall be sold as near as may be at the actual cost of the same to the State to be ascertained by him.

ADOPTED, February 16, 1864.

[No. 13.] Concerning the Celebration of Washington's Birthday.

Resolved by the Legislature of West Virginia, That the Senate and House of Delegates meet in joint session in the hall of the latter, on Monday the 22d inst., at 10 o'clock, A. M., and that Washington's farewell address be read upon the occasion.

ADOPTED, February 20, 1864.

[No. 14.] Requesting an increase of the Military Force within and a commander for the Department of West Virginia.

Resolved by the Legislature of West Virginia, That in view of the exposed condition of the military department within which our state is embraced, and the apprehended danger of early rebel raids and invasions within its limits, the Governor respectfully and earnestly request the war department to increase the military force therein; and that if not incompatible with the interests of the public service, the 4th and 7th regiments West Virginia volunteer infantry, and the 1st regiment West Virginia volunteer cavalry, be transferred to and permitted to remain in this military department, and that the Governor also request the war department to place some major general, now commissioned, in command of said department.

ADOPTED, February 19, 1864.

[No. 15.] Providing for the Entertainment of the Fourth Regiment West Virginia Volunteer Cavalry.

Resolved by the Legislature of West Virginia, That the Governor be, and he is hereby, empowered to expend a portion of the five thousand dollars placed at his disposal for the purpose of entertaining the several veteran regiments of the state in entertaining the fourth regiment West Virginia volunteer cavalry.

ADOPTED, February 25, 1864.

[No. 16.] Authorizing the Governor to present a Banner to the First Regiment West Virginia Volunteer Cavalry.

Resolved by the Legislature of West Virginia, That the Governor be, and he is hereby, authorized to procure and present to the First Regiment West Virginia Volunteer Cavalry a flag, with the names of the battle fields upon which they have fought, and the dates thereof, inscribed thereon, viz.: "Bloomery Gap, Va., February 13th, 1862; Winchester, Va., March 28th, 1862; McDowell, Va., May 8th, 1862; Cross Keys, Va., June 8th, 1862; Port Republic, Va., June 8th and 9th, 1862; Cedar Mountain, Va., August 9th, 1862; Kelly's Ford, Va., August ——, 1862; Bull Run, Va., August 29th, 1863; Chantilly, Va., August 31st, 1862; South Mountain, Md., September 16th, 1862; Antietam, Md., September 17th, 1862; Fredericksburg, Va., December 13th, 1862; Chancellorsville, Va., May 3d, 1863; Hanover, Pa., June 30th, 1863; Hunterstown, Pa., July 2d, 1863; Gettysburg, Pa., July 3d, 1863; Monterey Springs, Pa., July 4th, 1863; Hagerstown, Md., July 6th, 1863; Boonsboro, Md., July 8th, 1863; Brandy Station, Va., September 17th, and

October 12th, 1863; Culpepper C. H. Va., September 17th, and October 12th, 1863; Mourton's Ford, Va., September 18th and 19th, 1863; Griffinsburg, Va., October 12th, 1863; Stephensburg, Va., November 9th, 1863;" and that the cost of said flag be paid out of any money in the treasury appropriated for the defense of the state.

ADOPTED, February 27th, 1864.

[No. 17.] Authorizing the Governor to present a Banner to the Tenth West Virginia Volunteer Infantry.

Resolved by the Legislature of West Virginia, That the Governor be authorized to procure a flag for the Tenth Regiment of West Virginia Volunteer Infantry, in honor of the faithful services and hard battles through which they have victoriously passed, under their brave commander Col. Harris, bravely defeating the rebels on the 2d and 3d of July, 1863, at the town of Beverly, outnumbered by the enemy over three to one, under the lead of the rebel William L. Jackson, thereby saving our state from a destructive raid, and that there be inscribed on the banner: "Tenth West Virginia Regiment, Beverly, July 2d and 3d, 1863; Droop Mountain, Nov. 6th, 1863," and that the Governor be further authorized to pay for the flag out of the civil contingent fund.

ADOPTED, February 29, 1864.

[No. 18.] Approving the National Administration and favoring the re-election of Abraham Lincoln.

Resolved by the Legislature of West Virginia, *First*—That we have unwavering confidence in the ability, integrity and capacity of Abraham Lincoln, President of the United States, and that we fully indorse the measures of his administration for the suppression of the rebellion, the preservation of the Union and the triumph of freedom. *Second*—That, in the earnest conviction that no other man can so fully unite the loyal men of the country, and especially the loyal men of West Virginia for these great objects, we regard with favor the movement now plainly manifested throughout the country for his re-election to the chief magistracy of the nation.

ADOPTED, March 2, 1864.

[No. 19.] Directing the Governor to present a Banner to the Sixth Regiment West Virginia Cavalry.

Resolved by the Legislature of West Virginia, That the Governor be requested to procure and present to the Sixth West Virginia Cavalry a suitable flag, to be inscribed with the names of the battles in which this regiment has been engaged, viz: "McDowell, May 1862; Cross Keys, June 1862; White Sulphur, August 1862; Waterloo Bridge, August 1862; Bull Run, August 1862; Rocky Gap, August 1863; Droop Mountain, October 1863; Salem Raid, December 1863;" and that he be authorized to draw on the civil contingent fund for the amount required for the purchase of said flag.

ADOPTED, March 2, 1864.

[No. 20.] Directing the Governor to present a Banner to the Seventh Regiment West Virginia Cavalry.

Resolved by the Legislature of West Virginia: That the governor be requested to procure and present to the Seventh West Virginia Cavalry, (late Eighth Volunteer Infantry,) a suitable flag to be inscribed with the names of the battles in which this regiment has been engaged, viz: "Strasburg, June, 1862; Harrisonburg, June, 1862; Cross Keys, June, 1862; Freeman's Ford, August, 1862; Sulphur Springs, August, 1862; Waterloo Bridge, August, 1862; Bull Run, August, 1862; Droop Mountain, Oct. 1863; Salem Raid, Dec. 1863;" and that he be authorized to draw on the civil contingent fund for the amount required for the purchase of said flag.

ADOPTED, March 2, 1864.

[No. 21.] Authorizing the Governor to employ a Private Secretary.

Resolved by the Legislature of West Virginia: That the governor is hereby authorized to employ a private secretary, and pay his salary out of the civil contingent fund, not exceeding one thousand dollars in amount.

ADOPTED, March 3, 1864.

[No. 22.] Directing the Governor to present a Banner to the Fifth Regiment West Virginia Cavalry.

Resolved by the Legislature of West Virginia: That the governor be requested to procure and present to the Fifth West Virginia Cavalry a suitable flag to be inscribed with the names of the battles in which this regiment has been engaged, viz: "Laurel Hill, July, 1861; Alleghany, Dec., 1861; Cross Keys, June, 1862; Cedar Mountain, July, 1862; Sulphur Springs, August, 1862; Bull Run, 1862; Rocky Gap, 1863; Salem Raid, Dec. 1863; McDowell, May, 1862; Port Republic, June, 1862; Kelly's Ford, August, 1862; Waterloo Bridge, August, 1862; Beverly, April, 1863; Droop Mountain, Oct., 1863;" and that he be authorized to draw on the civil contingent fund for the amount required for the purchase of said flag.

ADOPTED, March 3, 1864.

[No. 23.] Appointing a Guard for the Capitol.

Resolved by the Legislature of West Virginia: That John H. Charnock be and he is hereby appointed as a guard for the capitol building during the recess of the legislature, and that, subject to approval of the governor, he take into his care and custody the furniture, keys, and other property belonging to the halls of the house of delegates and senate for the time aforesaid.

ADOPTED, March 3, 1864.

[No. 24.] Making an allowance to the Clerk of the House of Delegates to defray certain Expenses.

Resolved by the Legislature of West Virginia: That thirty dollars be and they are hereby allowed and placed at the disposal of the clerk of the house of delegates, for the purpose of paying the necessary expenses of forwarding to those entitled to them the pamphlet acts and the journals of the last and the journals of the present legislature, to be paid out of the fund appropriated for the expenses of the legislature.

ADOPTED, March 3, 1864.

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ACTS

OF THE

LEGISLATURE

OF

WEST VIRGINIA,

AT ITS

THIRD SESSION

COMMENCING JANUARY 17, 1865.

WHEELING.

1865.

[78]

ACTS.

CHAP. 1.—An ACT to extend the Time allowed the Civil Officers of of the counties of Jefferson, Berkeley, Morgan and Wayne, in which to Qualify and give Bond.

Passed January 17, 1865.

Be it enacted by the Legislature of West Virginia:

All the county officers who were elected on the twenty-seventh day of October, eighteen hundred and sixty-four, in and for the counties of Jefferson, Berkeley, Morgan and Wayne, shall be allowed until the twenty-fifth day of March, eighteen hundred and sixty-five, to qualify and execute their official bonds.

Allowed till March 25, 1865.

CHAP. 2.—An ACT to change the County Seat of Jefferson county from Charlestown to Shepherdstown.

Passed January 26, 1865.

Be it enacted by the Legislature of West Virginia:

1. The county seat of Jefferson county shall cease to be at Charlestown, in said county, on the first day of March, eighteen hundred and sixty-five.

Time removal takes place.

2. The county seat of Jefferson county shall be located at the town of Shepherdstown, in said county, until removed therefrom by a vote of the people of said county.

CHAP. 3.—An An ACT to provide for the Payment of the Annual Salary of the State Superintendent of Free Schools.

Passed January 26, 1865.

Be it enacted by the Legislature of West Virginia:

The sum of one thousand five hundred dollars is hereby appropriated for the annual salary of the state superintendent of free schools, to be paid according io the thirty-fourth section of an "act providing for the establishment of a system of free schools," passed December tenth, eighteen hundred and sixty-three.

$1,500 appropriated.

How paid.

CHAP. 4.—An ACT authorizing the Governor to surrender certain Prisoners for exchange.

Passed January 26, 1865.

Be it enacted by the Legislature of West Virginia:

What prisoners.

The governor of this state is authorized to deliver to the authorities of the United States government such state prisoners as they may wish to exchange for officers or privates of West Virginia regiments, who are prisoners in the hands of the rebels, if, in his opinion, such state prisoners have been in any way connected with the rebel army.

CHAP. 5.—An ACT to pay State Scouts.

Passed January 27, 1865.

Be it enacted by the Legislature of West Virginia:

$86,000 appropriated. How paid.

There is hereby appropriated out of the state treasury eighty-six thousand dollars, to be placed at the disposal of the governor, for the payment of state scouts.

CHAP. 6.—An ACT making an appropriation for the Payment of Money drawn by the Governor from certain Banks.

Passed January 30, 1865.

Be it enacted by the Legislature of West Virginia:

$29,264 08 appropriated.

Banks from which drawn.

For what purpose.

Twenty-nine thousand two hundred and sixty-four dollars and eight cents are hereby appropriated for the payment of that amount drawn by the executive of this state from the North Western Bank of Virginia and the Merchants' and Mechanics' Bank of Wheeling, and expended by him for the payment of the military companies organized for the protection of the border counties of the state, for the hospital for the insane at Weston, and for other purposes.

CHAP. 7.—An ACT to change the times of holding the Courts in the Eighth Circuit.

Passed January 30, 1865.

Be it enacted by the Legislature of West Virginia:

1. The commencement of the terms of the circuit courts in the several counties of the eighth judicial circuit shall hereafter be as follows:

Raleigh.

For the county of Raleigh on the first day of March, May, September and November.

Wyoming.

For the county of Wyoming on the seventh day of March, May, September and November.

Logan.

For the county of Logan on the eleventh day of March, May, September and November.

For the county of Boone on the eighteenth day of March, May, September and November. Boone.

For the county of Cabell on the twenty-fourth day of March, May, September and November. Cabell.

And for the county of Wayne on the fifteenth day of April, June, October and December. Wayne.

2. Sub-division VIII, of section three, of the act passed July ninth, eighteen hundred and sixty-three, entitled "an act to fix the terms of the several courts," is hereby repealed. Law repealed.

CHAP. 8.—An ACT to legalize the acts of John B. Baumgardner, Collector of the Revenue of Cabell county, and his Deputies, in the collection of said revenue, and to authorize the same to be pleaded in bar of certain suits therein named.

Passed January 31, 1865.

Whereas, John B. Baumgardner, of the county of Cabell, was appointed by the auditor collector of the revenue of the said county for the years eighteen hundred and sixty-one and eighteen hundred and sixty-two; and, whereas, the said Baumgardner executed a bond, with security, as such collector, which bond was approved by said auditor; and, whereas, after the approval of the said bond the said Baumgardner and his deputies collected a large portion of the revenue of the said county for the years aforesaid, which said Baumgardner has paid into the treasury; and, whereas, there is an error in said bond, by reason of which the same has been adjudged insufficient by the circuit court for Cabell county; therefore, Preamble.

Be it enacted by the Legislature of West Virginia:

The collection of the revenue of the said county of Cabell, for the years eighteen hundred and sixty-one and eighteen hundred and sixty-two, by the said John B. Baumgardner, collector as aforesaid, and his deputies in said office, and any and all acts done by them, or either of them, in or about the collection of said revenue, or any part thereof, are hereby legalized and made as valid and binding, to all intents and purposes, as if the said John B. Baumgardner had given his bond and security as such collector, in the manner and form required by law. And the said John B. Baumgardner and his said deputies, and any person or persons claiming title to property sold by them, or either of them, for the payment of any part of said revenue, may plead this act in bar of any suit now pending, or which may be hereafter brought against them, or either of them, for any cause whatever, growing out of the collection of said revenue. Official acts legalized. Authority to plead this act in bar of suits.

CHAP. 9.—An ACT to amend the law relating to the maintenance of Illegitimate Children.

Passed February 2, 1865.

Be it enacted by the Legislature of West Virginia:

Code re-enacted.

The fifth section of chapter one hundred and twenty-five of the Code of Virginia, second edition, is amended and re-enacted to read as follows:

How father of illegitimate child to be tried.

Penalties imposed.

Imprisonment.

Costs in case of innocence.

"If the accused appears and pleads 'not guilty,' the issue shall be tried by a jury, and if he be found guilty, the court shall order him to pay to the overseers of the poor of the county or corporation, for the maintenance of the child, such sums as it may deem proper, for each year, until such time as the court may appoint, unless it sooner die; and shall order the father to give a bond in such penalty, and with such sureties, as it may deem sufficient for the performance of said order; and shall order him to jail until such bond be given in court, or filed in the clerk's office, or the woman and the said overseers consent to his discharge, or he be otherwise legally discharged; and if found not guilty by the jury, he shall be discharged, and recover his costs against the said overseers."

CHAP. 10.—An ACT for the Abolishment of Slavery in this State.

Passed February 3, 1865.

Be it enacted by the Legislature of West Virginia:

Slaves declared free.

1. All persons held to service or labor as slaves in this state, are hereby declared free.

Slavery prohibited in future.

2. There shall hereafter be neither slavery nor involuntary servitude in this State, except in punishment for crime, whereof the party shall have been duly convicted.

CHAP. 11.—An ACT to provide for the Removal of Suits Pending in Counties where the administration of justice is interrupted.

Passed February 3. 1865.

Be it enacted by the Legislature of West Virginia:

Authority of circuit judge to order removal.

1. Where there is no judge qualified according to law to hold the circuit court of any county, or from any cause the jurisdiction of the circuit court for such county, cannot be safely, and without interruption, exercised therein, it shall be lawful for the judge, if there be one, of such circuit, and if there be none, then for the judge of any adjoining circuit, at his discretion, and either in term time or vacation, upon the petition of any party to a civil suit at law or in chancery, or any civil proceeding pending in such county, to order the removal of such suit or proceeding, with the original papers pertaining thereto, or certified or proved copies thereof and certified or proved copies of

all proceedings, orders and decrees theretofore had or made therein, to the circuit court of any other county over which the judge who makes the order has jurisdiction, to be thereafter proceeded with as if the said suit or proceeding had been commenced in the last mentioned court.

Conditions requisite to making the order.

2. Such order of removal shall only be made upon the terms that the petitioner shall, at his own expense, cause notice of such removal to be given to the other parties to the suit or proceeding, and shall deposit with the clerk of the court to which the suit or proceeding is to be removed, such sum of money to be determined by the judge who makes the order of removal, as will probably be sufficient to cover all future costs.

CHAP. 12.—An ACT to amend the Act passed October 26, 1863, entitled "An Act providing for the formation of Corporations, and regulating the same."

Passed February 3, 1865.

Be it enacted by the Legislature of West Virginia:

1. The capital of a corporation, formed under the "act providing for the formation of corporations, and regulating the same," passed October twenty-sixth, eighteen hundred and sixty-three, shall not exceed three millions of dollars.

Quantity of land that may be held by oil companies increased.

2. Oil companies may hold not exceeding three thousand acres of land each, notwithstanding anything to the contrary contained in the twentieth section of said act.

3. The third section of said act is hereby amended and re-enacted to read as follows:

Authority to corporations to regulate shares.

"3. The capital of every corporation now formed, or that may hereafter be formed under this act, shall be divided, as may be agreed upon by the persons desiring to be incorporated, into such number of shares and in such sums as said corporators, respectively, may deem proper and expedient."

Law repealed.

4. The fourth rection of the above-mentioned act, is hereby repealed.

CHAP. 13.—An ACT making an Appropriation to the West Virginia Hospital for the Insane.

Passed February 3, 1865.

Be it enacted by the Legislature of West Virginia:

$2,872 25 appropriated. For what.

The sum of two thousand eight hundred and seventy-two dollars and twenty-five cents is hereby appropriated to discharge the liabilities of the West Virginia Hospital for the Insane, to the first of January, eighteen hundred and sixty-five, and the same shall be paid by the auditor on the draft of the treasurer of said hospital, endorsed by the president of the board of directors theroof, anything in the eighty-fifth chapter of the Code of Virginia to the contrary notwithstanding.

CHAP. 14.—An ACT to prescribe the Time within which Persons elected or appointed to Office must Qualify.

Passed February 3, 1865.

Be it enacted by the Legislature of West Virginia:

All officers allowed 60 days,

1. Every person elected or appointed to an office shall take the proper oaths, and, if bond be required of him by law, give his official bond, within sixty days after he has been, in the manner prescribed by law, declared elected, or has been notified of his appointment; except that justices and constables shall take the oaths of office and give bond within thirty days after they are declared elected; and that in cases of appointment the appointing power may prescribe the time within which the oaths of office must be taken and bond given by the person appointed, if bond be required by law.

Except justices and constables.

Authority of appointing power.

Consequence of and penalty for failure.

2. If any person elected or appointed to an office fail to take the proper oaths or give the proper bond, where bond is required by law, within the time prescribed by the preceding section, the office shall be deemed vacant; and if he act in such office before being duly qualified as aforesaid, he shall be fined not less than one hundred nor more than one thousand dollars.

Laws repealed.

3. The sixth and seventh sections of the act relating to official bonds, passed June twenty-ninth, eighteen hundred and sixty-three, and so much of the fourth and fifth sections of the act to provide for the assessment of taxes, passed December third, eighteen hundred and sixty-three, and of the fifth section of the act to regulate the election and qualification of justices and constables and to prescribe in part their powers and duties, passed December seventh, eighteen hundred and sixty-three, as is inconsistent herewith, are hereby repealed.

CHAP. 15.—An ACT to authorize Suits in Lewis county in Cases heretofore cognizable in the Courts of Braxton county.

Passed February 6, 1865.

Be it enacted by the Legislature of West Virginia:

Authority for removal.

1. Any action at law or suit in equity which, according to the one hundred and sixty-ninth chapter of the Code of Virginia, second edition, might be brought in the county of Braxton, may be hereafter brought in the county of Lewis; but nothing herein contained shall be construed to affect any provision of law for the limitation of actions or suits.

Proviso.

Conditions requisite.

2. No jury shall be called or impanelled in any action or suit brought in the county of Lewis by virtue of this act, until and unless the plaintiff pay to the clerk of the court twelve dollars to defray jury costs; which sum the said clerk shall pay into the treasury of said county of Lewis; and if judgment be rendered for the plaintiff, shall

tax the same in the costs to be recovered by him. If judgment be rendered against the plaintiff, no jury costs shall be taxed against him if he has paid the sum of twelve dollars to the clerk as aforesaid. Taxing of costs.

3. The act entitled "an act to authorize suits in Lewis county in cases heretofore cognizable in the courts of Braxton county," passed March first, eighteen hundred and sixty-four, is hereby repealed. Law repealed.

CHAP. 16.—An ACT making an Appropriation to the Civil Contingent Fund.

Passed February 6, 1865.

Be it enacted by the Legislature of West Virginia:

The sum of two thousand five hundred dollars is hereby appropriated on account of the civil contingent fund. $2,500 appropriated.

CHAP. 17.—An ACT to authorize the Holliday's Cove Railroad Company to Borrow Money.

Passed February 7, 1865.

Be it enacted by the Legislature of West Virginia:

1. That the Holliday's Cove railroad be, and it is hereby empowered, in addition to the amount already authorized by law, to borrow money to an amount not exceeding five hundred thousand dollars, at a rate not exceeding seven per centum per annum; to issue bonds, plain or coupon, for the payment of the same, and to secure said bonds by mortgage on their road or bridge, or both, and the income thereof and all the franchises of said company. Authority to borrow money. To what amount. At what per cent. Provision for payment.

2. The place of payment of the principal and interest of said bonds, may be designated by the directors of the company, and sales thereof at less than par, shall not be deemed infractions of the usury law. Regulations respecting sale of bonds.

CHAP. 18.—An ACT authorizing the Boards of Supervisors of the several Counties of the State, to appoint Township Collectors.

Passed February 7, 1865.

Be it enacted by the Legislature of West Virginia:

1. It shall be lawful for the boards of supervisors of the several counties of this state, to appoint collectors in any or all of the townships thereof, whenever, in their opinion, the public interest would be thereby promoted, for the collection of all levies made for the payment of bounties to volunteers, and for the support of the families of living and deceased soldiers in their respective counties, who have heretofore volunteered, or who may hereafter volunteer in the service of the United States, and for the collection of all levies made for the payment of any loan negotiated for the purposes aforesaid. Authority to appoint township collectors. For collection of what levies.

Regulations respecting appointments.

2. Such collectors may be appointed for the collection of any such levies, whether heretofore or hereafter made, provided the same have not been actually placed in the hands of the sheriff, or other collector of the county, for collection.

Duties of collectors.

3. The collectors appointed by virtue of this act, shall faithfully collect and pay over to the county treasurer all money collected by them, at such times as the board of supervisors shall direct, and may distrain for taxes after thirty days from the time the lists of such levies are placed in their hands for collection.

Compensation of collectors.

Collector's bond.

4. The boards of supervisors shall allow to the collectors aforesaid, for the collecting and paying over to the county treasurer the levies aforesaid, such commission, not exceeding three dollars for each one hundred dollars actually collected and paid over, as they shall deem just; and they shall require said collectors to give bond with security to be approved by them, in such penalty, not less than five thousand dollars, as they shall direct, made payable to the state of West Virginia, and conditioned for the faithful discharge of their duties as required by law.

CHAP. 19.—An ACT authorizing the service of Process by Individuals.

Passed February 7, 1865.

Be it enacted by the Legislature of West Virginia:

What process.

Return thereof.

1. The process to commence a suit at law or in chancery, including writs of scire facias, mandamus, prohibition, and the alias or other process where the original is not returned executed, may be served by any credible person, as well as by the officer to whom it is directed; and the return of such person, verified by his affidavit, shall be evidence of the manner and time of service.

Proviso.

2. Nothing herein contained shall be considered as implying that such service heretofore made, is invalid in law.

CHAP. 20.—An ACT for the relief of George W. Spruce, of Kanawha County.

Passed February 9, 1865.

Be it enacted by the Legislature of West Virginia:

$387,93 appropriated.

For what.

1. The sum of three hundred and eighty-seven dollars and ninety-three cents is hereby appropriated for the purpose of paying George W. Spruce for his services as commissioner of the revenue of Kanawha county, (upper district,) for the year eighteen hundred and sixty-one, to be paid out of the proceeds of any uncollected taxes in said county due the state for the year eighteen hundred and sixty-one.

How paid.

2. The collector of Kanawha county for the year eighteen hundred and sixty-one, is authorized to pay to the said Geo. W. Spruce, the

sum named in the first section of this act, and shall be entitled to a credit upon the auditor's books for that amount for the year eighteen hundred and sixty-one, upon the production to the auditor of satisfactory evidence of the payment of said sum by him to said Spruce.

CHAP. 21.—An ACT to regulate the Public Printing.

Passed February 9, 1865.

Be it enacted by the Legislature of West Virginia:

Election and term of Public Printer.

1. At the present session of the Legislature, and at the regular session thereof in the year eighteen hundred and sixty-six, and in the year eighteen hundred and sixty-seven, and every second year thereafter, a public printer shall be elected, to continue in office until his successor is elected and qualified.

How elected.

2. The election shall be by joint vote of the two branches of the legislature, a quorum of each being present.

Bond.

3. He shall give bond in the penalty of five thousand dollars, according to the act passed June twenty-ninth, eighteen hundred and sixty-three, entitled "An Act relating to official bonds."

Removal from office.

4. He may be removed from office by joint resolution of the legislature, a majority of the members elected to each branch concurring therein. He may slso be removed by the governor, during the recess of the legislature, for misbehavior, incapacity, or neglect of official duty; but in such case the governor shall report the cause of removal to the legislature at the commencement of the next session thereof.

Vacancy.

5. Whenever a vacancy in the office exists during the recess of the legislature, the governor may fill the same; and the person so appointed, after giving bond and taking the proper oaths, shall hold the office until a public printer is elected by the legislature, and is qualified according to law.

Printing by others.

6. For good cause, the governor may order any public printing or binding to be done by others than the public printer; but he shall communicate his reasons therefor to the legislature as soon as may be practicable.

Printing for House of Delegates.

7. The clerk of the house of delegates shall superintend the printing of the laws, and all matter to be printed therewith; also, of the journal of the house, and all printing ordered by the house, or by joint order or resolution of the two houses. If any such printing be not properly and promptly executed, he shall forthwith report such failure to the speaker, and with the approval of the speaker, may employ others to do the work, or any part thereof.

Printing for Senate.

8. The clerk of the senate shall superintend the printing of the journal of the senate, and of all printing ordered by the senate. If

any such printing be not properly and promptly executed, he shall report the failure forthwith to the president of the senate, and, with his approval, may employ others to do such work, or any part thereof.

Printing for departments.

9. Except as aforesaid, all officers of the state at the seat of government, authorized to have any printing or binding done at the expense of the state, are required to have the same done by the public printer, and no money shall be paid out of the treasury for printing or binding done in contravention of this section.

Printing of Journals of Legislature.

10. The public printer shall print two hundred and fifty copies of the journal of the house of delegates, and the same number of the journal of the senate, in octavo form, and cause the same, with the printed bills in their regular order, as hereinafter provided, to be, substantially and in workman-like manner, half-bound, and to be delivered to the secretary of the state. And the said secretary shall cause the same to be distributed as follows: Two of each to each member of the legislature, one to every recorder of the state, and the remainder as the governor may direct.

Printing of acts.

11. He shall print, in octavo form, two thousand five hundred copies of the acts of each session of the legislature, with the index and other matters directed by law to be published therewith; of which he shall deliver in sheets, as the session progresses, one hundred and forty copies to the clerk of the senate for the use of that branch, and three hundred and sixty copies to the clerk of the house of delegates for the use of that branch. The remaining two thousand, as soon as possible after the end of the session, shall be substantially and in workmanlike manner, half-bound if the number of pages in each copy exceed one hundred and fifty, but otherwise done up neatly in pamphlet form with paper covers; and in either case delivered to the secretary of the state, to be by him distributed as follows:

Distribution of same.

One copy to every judge and clerk of a court in this state;

One copy to every prosecuting attorney, sheriff, assessor, recorder, county treasurer, clerk of board of supervisors, supervisor and county superintendent of free schools;

To the governor, attorney general, secretary of the state, auditor, treasurer, adjutant general, quartermaster general, and state superintendent of free schools, one copy each;

Five copies to the clerk of the senate, one for his own use, and the others to be kept in his office for the use of the senate;

And ten copies to the clerk of the house of delegates, one for his own use, and the others to be kept in his office for the use of the house;

And eight copies to each member of the legislature, one for his own use, and the others for distribution among the people;

One copy to every public library in the state;

One copy to the West Virginia hospital for the insane;

And one copy to the editor of every newspaper published in the state;

Three copies to the librarian of congress, whereof one shall be for the library, and one for each house of congress;

Three copies to the secretary of state of the United States, one for his own office, one for the president and one for the attorney general of the United States;

To the judge, clerk, attorney and marshal of the district court of the United States for the district of West Virginia, one copy each;

One copy to the governor of every state and territory;

To every justice in this state one copy;

Sale of residue.

The residue of the said two thousand copies to be sold under direction of the secretary of the state, at a price to be fixed by him near the actual cost of the same to the state; the proceeds of such sales to be paid into the treasury.

Printing of bills for legislature.

12. The public printer shall print in octavo form, five hundred copies of every bill which may be directed to be printed by the rules of either branch of the legislature, or by special order. Two hundred and fifty copies of every senate bill shall be reserved to be bound with the journal of the senate, and the same number of the house bills to be bound with the journal of the house, and the residue shall be delivered as follows: Seventy copies of each bill to the clerk of the senate for the use of that branch, and one hundred and eighty copies to the clerk of the house for the use of that branch.

Rates for book and pamphlet work.

13. All book work and pamphlet work done by the public printer for the state, after the first day of January, eighteen hundred and sixty-five, shall be paid for at the following prices: Seventy cents per token for press work; for composition, seventy cents per thousand ems for plain work; one dollar and five cents per thousand ems for rule or figure work, and one dollar and forty cents per thousand ems for rule and figure work; but all blanks, circulars, handbills, advertisements and other kinds of printing, except book and pamphlet work, shall be paid for at the lowest customary rates of printing for private individuals or corporations; these prices not to include paper, but the public printer is to furnish paper at the expense of the state at cost. For book binding he is to be paid according to the usual rates established among other book binders in the city of Wheeling.

And for binding.

Payment of bills.

14. The bills for the work to be done as aforesaid under the superintendence of the clerk of the senate and of the clerk of the house of delegates, shall, if correct, be certified by those officers respectively to the auditor. The bills for the work to be done for any executive department, shall, if correct, be certified to the auditor by the officer authorized by law to order the same. The bills for any other work, shall be certified by the governor, when he is satisfied of the correctness thereof. And such bills, in either case, shall be paid out of any money appropriated by law to pay for public printing.

Laws repealed.

15. The sixteenth section of chapter fifteen of the code of Virginia, second edition; so much of chapter eighteen of said code, as relates to the public printer; chapter twenty of said code; the act passed August fourth, eighteen hundred and sixty-three, entitled "an act relating to the public printing;" and the act of the general assembly

of Virginia, passed July sixteenth, eighteen hundred and sixty-one, entitled "an act altering the compensation of the public printer and the printer of the senate," are hereby repealed.

Chap. 22.—An ACT to authorize an Increase of the Township Levies for the construction and repair of Roads and Bridges.

Passed February 9, 1865.

Be it enacted by the Legislature of West Virginia:

1. The voters of each township, at any legal annual meeting, or at a special meeting duly called for the purpose, if the votes in favor of the proposition are two-thirds of the whole number given, or equal in number to a majority of all the voters of the township, in addition to all taxes required by law to be levied on the property of their township, may levy taxes on such property for the opening, repair and improvement of public roads, and the building and repair of bridges on the same, not more in any one year than twenty cents on every one hundred dollars of such value.

Increased from 10 to 20 cents on the $100.

2. So much of section nineteen of the "act relating to the townships and township officers," passed November second, eighteen hundred and sixty-three, as conflicts with this act, is hereby repealed.

Law repealed.

Chap. 23.—An ACT prescribing the duties of Assessors in certain Counties.

Passed February 10, 1865.

Be it enacted by the Legislature of West Virginia:

How assessor in disturbed counties to make proper lists.

1. If the assessor of any county or district in the state shall be unable to perform the duties required of him by sections sixty-three, sixty-four, sixty-five and sixty-six, of the act passed the third day of December, eighteen hundred and sixty-three, entitled "an act to provide for the assessment of taxes," in the manner therein directed, by reason of such county or district, or any part thereof, being infested with armed rebels, such assessor shall, nevertheless, proceed to obtain and make out the lists required by said sections from the best information he can obtain; and for this purpose he may have reference to the former land and property books of such county or district.

Commissioners to value lands.

2. The governor is authorized, whenever he shall deem it expedient and practicable to do so, to appoint one or more commissioners, or the assessor of the county or district, to value the lands in such county or assessment district in this state, in which the commissioner's books have been destroyed or removed so that the same cannot be used for reference by the assessor of such county or district.

CHAP. 24.—An ACT to amend the act providing for the construction of a Road in the County of Hardy, passed September 10, 1863.

Passed February 10, 1865.

Be it enacted by the Legislature of West Virginia:

The act providing for the construction of a road in the county of Hardy, passed September tenth, eighteen hundred and sixty-three, is hereby amended and re-enacted so as to read as follows:

Names of Commissioners.

"1. Ernest Muntzing, Abram W. Smith, and John O. Idleman, are hereby appointed commissioners to open a wagon road, with a grade not exceeding five degrees of elevation, from Greenland Gap turnpike to the North Fork turnpike, in the county of Hardy. The sum of one thousand dollars is hereby appropriated for the construction of said road, out of the treasury of the state, to be paid upon the order of the said commissioners, in the same manner as other appropriations from the treasury are paid.

Appropriation.

How paid.

"2. Said commissioners shall not draw any money out of said appropriation, until that part of the work is completed for which such draft is drawn, and then only upon their written statement upon oath, that work equal to the amount drawn is performed, and the money due for the same.

Commissioners' duties.

"3. The said commissioners shall superintend the construction of said road without compensation, and may receive gratuitous labor from the citizens to aid in the construction of said road. The commissioners shall cause the road to be well made, and with as little expense as practicable, so that loaded wagons may conveniently pass the same."

CHAP. 25.—An ACT to authorize Suits and Proceedings which might, under existing laws, be brought in either of the counties of Wayne, Logan and Boone, to be brought and prosecuted in the county of Cabell.

Passed February 10, 1865.

Be it enacted by the Legislature of West Virginia:

Suits cognizable in certain counties may be bro't in Cabell.

1. Any action at law, suit in equity or other judicial proceeding, which, under the laws now in force, might be commenced and prosecuted in either of the counties of Wayne, Logan or Boone, may be hereafter brought and prosecuted in the county of Cabell with the same force and effect, and to the same extent, as if commenced and prosecuted in either of the said counties of Wayne, Logan or Boone.

Process issued and levied by officers of Cabell.

2. All process in such suits and proceedings, including attachments, shall be issued by the clerk of the circuit court of the said county of Cabell, and directed to the sheriff or any constable of the said county, and shall be levied, served and returned by such sheriff or constable in the same manner, and with like effect, as if directed to and served by the sheriff or any constable of the county in which the same is so levied or served, and for all services performed by such sheriff or constable

in the service or levy of process under this act, he shall be entitled to demand and receive double the fees now allowed by law for similar services.

Powers of clerk of circuit court.

3. The said clerk of the circuit court of Cabell county shall have the custody and control of the records, papers and proceedings in each of the said counties of Wayne, Logan and Boone, and may copy and certify such records and proceedings, and issue executions and other process thereon to the same extent, and with like effect, as if he were the regularly appointed clerk of the circuit court of the county to which such records and proceedings belong; and for all services performed by said clerk, under the provisions of this section, he shall be entitled to demand and receive double the fees now allowed by law for similar services.

Operation of act to cease.

4. Whenever the circuit court of the said county of Cabell shall be of opinion, and so enter of record, that the courts in either of the said counties of Wayne, Logan or Boone, can be held therein with safety, the operation of this act as to such county shall cease, and all suits and proceedings then pending in said county of Cabell, commenced under the provisions of this act, may, for good cause shown, be transferred to and tried and determined in the circuit court of the county where the same should have been brought, except for the provisions of this act.

Transfer of papers.

5. When any such transfer is made, the clerk of the circuit court of the said county of Cabell shall transmit to the clerk of the court to which such transfer is made, all the original papers in the cause, and a certified copy of the record and proceedings in each case up to the time of transfer, and such suit or proceeding shall be docketed and proceeded with in said court in the same manner, and with like effect as if originally commenced in such court.

Jury expenses.

6. No jury shall be called or impannelled in any action or suit brought in the county of Cabell, under the provisions of this act, until the plaintiff shall deposit with the clerk six dollars, to pay jury expenses, which sum shall be paid by said clerk to the treasurer of said county.

CHAP. 26.—An ACT to regulate the Exemption from Civil Process of Persons employed in Military or Naval Service.

Passed February 10, 1865.

Be it enacted by the Legislature of West Virginia:

Stay of legal proceedings against.

1. If a suit or proceeding at law or in equity be commenced before any court or justice, to collect a debt or enforce a contract against the person or property of any one who has volunteered or been drafted or ordered into the military service of the United States, or of this state, or into the naval service of the United States, or who has entered such service as the substitute of another; or if any execution be issued against the person or property of such person or his surety, the court or justice, or the judge of such court in vacation, upon satisfactory

proof of the fact, by affidavit or otherwise, shall make an order staying further proceedings therein until three months after the term of service of such person shall have expired. But such suit or proceeding shall, nevertheless, if commenced in proper time, prevent the demand of the plaintiff being barred by the statute of limitations; and after the expiration of the stay of the proceedings to be ordered, as aforesaid, it may be prosecuted as if this act had not been passed. And where there are several defendants, one or more of whom may be entitled to such stay, the suit or proceeding may, nevertheless, be prosecuted, and the execution, except as against the surety as before provided, be proceeded with against the others.

Soldiers.

Statute of limitations not to run.

Co-defendants excepted.

Exception as to certain claims.

2. The preceding section shall not apply to any case where the demand of the plaintiff arises out of any kind of tort or violence committed by the defendant, or by his order, aid or procurement, upon the property or person of another; or where the suit or proceeding is instituted to compel the defendant to account for or pay over any money for which he may be liable as a trustee or fiduciary, or as an officer of the state or of any county, township or municipal corporation; or where the suit or proceeding is instituted to compel the defendant to deliver up any property, real or personal, to the person entitled to the possession thereof. Nor shall it apply to the granting, reinstating or dissolving of any injunction.

Person employing substitute excepted.

3. No person drafted or ordered into the service, as aforesaid, shall be entitled to the benefit of this act if he has employed a substitute to perform the service in his stead.

Laws repealed.

4. The eleventh section of the twenty-ninth chapter of the Code of Virginia, second edition, and the act of the general assembly of Virginia amending and re-enacting the same, passed January twenty-ninth, eighteen hundred and sixty-three, are hereby repealed.

CHAP. 27.—An ACT to amend and re-enact the Sixteenth and Thirty-third Sections of "An Act providing for the Construction and Repair of Roads and Bridges."

Passed February 11, 1865.

Be it enacted by the Legislature of West Virginia:

1. The sixteenth and thirty-third sections of the act entitled "an act providing for the construction and repair of roads and bridges," passed December fourth, eighteen hundred and sixty-three, are hereby amended and re-enacted so as to read as follows:

Duty of surveyor of roads.

"16. It shall be the duty of every surveyor of roads to order out every such person, between the first day of April and the first day of October, annually, to meet with proper tools and perform the work aforesaid, on the public roads within his precinct; and if any such person, being personally warned by the surveyor, or by leaving a written notice at his usual place of abode, or by some person under the direction of the surveyor, by whom such warning can be proven, shall refuse or neglect, having had at least three days' notice, to attend by

Refusal to work on roads.

himself or a substitute acceptable to the surveyor, on the day and at the time and place directed by the surveyor, or having attended shall refuse to obey the direction of the surveyor, or shall spend the time in idleness or inattention to the duties assigned him, every such delinquent shall forfeit and pay for neglect to attend, unless good excuse be shown therefor, or for any of the offences specified, two dollars for every such neglect or offence; which penalty, if paid within ten days from the date of the notice to attend, shall release such delinquent from one of the two days' work required by the fifteenth section of this act, but if not paid within ten days, shall be recovered by action before any justice of the township, at the suit of the surveyor, with costs of collection."

Penalty.

Bond of surveyor

"33. Every surveyor of roads, before entering on the duties of his office, shall himself, with one or more good securities, execute and deliver to the clerk of his township a bond, in a penalty of one hundred dollars, conditioned for the faithful performance of the duties of his office and the payment of any money in his hands at the expiration of his term of office, to his successor. If any surveyor shall fail to pay over such money in his hands to his successor, it shall be the duty of said successor to institute a suit before a justice upon his said bond for the use of the precinct, and recover from him and his sureties such damages as may be awarded against him for any breach of his official bond, and costs. The oaths of office may be administered to such surveyor by the said clerk, who shall file the certificate thereof in the office of the recorder of his county.

Suit for failure to pay over money.

Chap. 28.—An ACT further to prescribe the Powers and Duties of Justices and Constables.

Passed February 11, 1865.

Be it enacted by the Legislature of West Virginia:

Suits against justices for misconduct in office.

1. So much of the eighteenth section of the act to regulate the election and qualification of justices and constables, and prescribe in part their powers and duties, passed December seventh, eighteen hundred and sixty three, as provides that one justice shall not have cognizance of an action against another for misconduct in office, is hereby repealed.

Execution, where leviable.

2. A constable to whom an execution, issued on the judgment of a justice, is delivered to be executed, may execute the same anywhere within the county in which it was issued.

3. The person in whose favor a judgment is rendered by a justice, or who is entitled to receive the money or any part of it due thereon, may file in the clerk's office of the circuit court of the county in which the judgment was rendered, a transcript thereof, certified by the justice who has the custody of the docket in which such judgment is entered; and the said clerk may issue executions thereon in the same manner, and with like effect as if the judgment had been rendered by the circuit court. The transcripts, filed as aforesaid, shall be entered by the clerk in his execution docket and indexed in the name of both

Executions issued by clerk of circuit court on judgment of justice.

plaintiff and defendant, and be filed in separate bundles for each year; for which service the clerk shall be entitled to a fee of twenty cents, to be paid by the person at whose instance the service is rendered. Clerk's fees.

4. Judgments of justices may be docketed in the judgment docket kept in the recorder's office, in a like manner and with like effect as judgments of the circuit courts. Judgments docketed in recorder's office.

5. The official dockets and papers of the justices acting within any county of this state, under the laws of the state of Virginia and the sixth section of the ordinance to provide for the organization of the state of West Virginia, passed by the late constitutional convention, shall be distributed to and among the justices who have been or may be elected in such county, pursuant to the laws of this state, as the board of supervisors of the county may by ordinance or resolution direct; and the justice to whom any docket and papers of a former justice are delivered as aforesaid, may give and certify transcripts thereof, issue executions and other process in the suits entered thereon, and do all such other acts in relation thereto as he may lawfully do in relation to his own official docket and papers. Distribution of dockets of former to present justices. Their power respecting the same.

6. On a suggestion made by the judgment creditor to the justice authorized to issue execution, that any person within the county has property in his possession or control belonging to the debtor, subject to execution, or is indebted to the debtor, whether such debt be due or not, the justice may cause such person to be served with a written notice to appear before him at the time specified in the notice, and answer respecting the said property or debt. When the suggestion is against a corporation any of its officers may also be subpœnaed to appear and answer, and like proceedings may be thereupon had against the person or corporation so notified as against a garnishee in attachment, and with like effect. Suggestion of property belonging to debtor. When against corporation.

7. In suits and proceedings before a justice, service of process and notices on a township may be made by leaving a copy thereof with the clerk of the township. Service on township.

8. When an appeal is taken by a county or township from the judgment of a justice, no security shall be required. Appeal without security.

9. Constables elected under the laws of the state of Virginia, and exercising the powers and performing the duties of their office within this state since the twentieth day of June, eighteen hundred and sixty-three, may execute and return any executions which were in their hands at the time they went out of office, and sell property levied on by them, notwithstanding the provisions contained in the two hundred and thirty-fourth section of the above mentioned act. Authority of former constables as to executions.

10. No appeal from the judgment of a justice shall be tried on motion of the appellant within less than three months from the time the transcript and papers are filed with the clerk of the circuit court, unless at least ten days notice of trial be given to the appellee, his agent or attorney. Notice of trial to appellee.

Costs of continuance.

11. When the defendant shall demand a continuance of right, pursuant to the one hundred and fourth section of the said act, the costs of such continuance shall abide the result of the suit, notwithstanding anything to the contrary contained in the one hundred and ninth section.

Attachments.

12. So much of section sixty-two of said act as requires attachments to be levied in the presence of one or more credible persons, is hereby repealed. And the appraisement required by said section may be made at any time before the return of such attachment.

CHAP. 29.—An ACT to amend and re-enact Sections 23, 27, and 28 of Chapter 151, and Section 13 of Chapter 170, of the Code of Virginia.

Passed February 11, 1865.

Be it enacted by the Legislature of West Virginia:

1. Sections twenty-three, twenty-seven and twenty-eight of chapter one hundred and fifty-one of the code of Virginia, second edition, are hereby amended and re-enacted so as to read as follows:

Order of sale.

How proceeds disposed of.

Terms and report of sale.

Sale set aside or confirmed.

Conveyances under former judgments legalized.

Appointment of new commissioner.

"23. If the claim of the plaintiff in any suit or proceedings under this chapter be established, judgment or decree shall be rendered for him, and the court shall dispose of the specific property mentioned in the second section as may be right, and shall order the sale of any real or personal estate levied upon under and by virtue of any such attachment, which shall not have been previously sold or replevied under this chapter, and direct the proceeds of the sales of such property, and whatever else is subject to the attachment, including what is embraced by such replevy or forthcoming bond, to be applied in satisfaction of such judgment or decree. When a sale of real estate is so ordered, the court shall prescribe in the order the terms of such sale and the officer or person by whom it shall be made. The officer or person hereafter making such sale of real estate, shall report to the court which ordered the sale a description of the real estate so sold by him, the name of the purchaser and the sum for which it sold. The court, for good cause, may refuse to confirm the sale and order the property to be resold; but if good cause for setting the sale aside be not shown, the court shall confirm the same, and shall direct a deed of conveyance of the real estate so sold, by the officer or person selling the same, to the purchaser thereof. All deeds and conveyances of real estate heretofore or hereafter made by any officer or other person under any judgment, decree or order heretofore rendered or made under any of the provisions of this chapter, are hereby legalized and made as valid and effectual for the purpose thereby intended as if the making thereof had been expressly authorized by the provisions of this chapter. And in case of the death, removal, inability or refusal to act of the officer or person appointed to make the sale and conveyance herein provided for, before such sale and conveyance shall have been made, the circuit court of the county in which such judgment, decree or order was rendered or made, or the judge thereof in vacation, may, by an order made for that purpose, appoint some other officer or person to perform the duties required by such order of sale. But no real estate shall be sold under such order until all other property and money subject to the attachment has been exhausted, and then only so much thereof as is necessary to pay the judgment or decree."

Real estate sold last.

"27. If a defendant, against whom, on publication, a judgment or decree has been or shall hereafter be rendered in an action or suit in which an attachment has been or may be sued out and levied, as provided in this chapter, or his personal representatives, shall return to or appear openly in this State, he may, within one year after a copy of such judgment or decree shall be served upon him, at the instance of the plaintiff, or within five years from the date of such judgment or decree, if he be not so served, petition to have the proceedings reheard. Such petition shall be presented to the circuit court of the county in which the judgment or decree was rendered, and, unless it be presented on behalf of a corporation, shall state the residence of the defendant at the commencement of the present rebellion, and at the time such judgment or decree was rendered, the state of which he claims to be a citizen, and also his grounds of defence against such judgment or decree, and shall be verified by the affidavit of the party presenting the same. The said petition when not presented on behalf of a corporation, shall be accompanied by the affidavit of such defendant or his personal representative, stating the following facts:—*First*, That such defendant never voluntarily bore arms against the United States, the reorganized government of Virginia or the state of West Virginia. *Second*, That such defendant never voluntarily gave aid or comfort to persons engaged in armed hostility against the United States, the reorganized government of Virginia or the state of West Virginia, by countenancing, counseling or encouraging them therein. *Third*, That such defendant never sought, accepted, nor attempted to exercise any office or appointment whatever, civil or military, under any authority, or pretended authority, hostile to the United States, the reorganized government of Virginia, or the state of West Virginia, *Fourth*. That such defendant never yielded any voluntary support to any government or pretended government, power or constitution, within the United States, hostile or inimical thereto, or hostile or inimical to the reorganized government of Virginia or the state of West Virginia: Provided, nevertheless, that if the judgment or decree be against several defendants upon a demand founded on contract, the court may order a rehearing and permit defence to be made on behalf of all the said defendants, if the petition be accompanied by the affidavit of any one of them stating the facts above mentioned. If the petitioner claims to be a citizen of this State, he shall also make and file an affidavit that he will support the constitution of the United States and the constitution of West Virginia, and that he takes such obligation freely and of choice, without any mental reservation or purpose of evasion. Upon the filing of such petition and affidavits, a summons shall be awarded by said court against the plaintiff or his

Petition for rehearing.

Statement of petition.

Affidavit of petitioner.

Rehearing on affidavit of one of several defendants.

Affidavit of citizen of this state.

Summons against plaintiff.

personal representative, commanding him to show cause, if any he can, at the next term of such court, why the defendant or his personal representative shall not be permitted to make defence against such judgment or decree, which summons shall be issued by the clerk of such court and served upon the plaintiff or his personal representative at least thirty days before the return day thereof. Upon the return of such summons, executed, the plaintiff or his personal representative may file his own affidavit, or that of any other person, denying any one or more of the facts stated in the affidavit of the defendant or his personal representative, filed with his petition, as aforesaid, and showing wherein such defendant may have done or committed any of the acts mentioned in his said affidavit, and thereupon an issue shall be made up by said court and tried by a jury as to whether the said defendant has been guilty of the acts charged against him in said affidavits filed by the plaintiff or his personal representative, upon which issue the plaintiff shall have the affirmative. If the jury find that the defendant has been guilty of any of the acts so charged against him, such defendant, his personal representative and all others, in any way claiming under, by or through him, shall forever be precluded from appearing in or making defence against such judgment or decree, or in any manner questioning the validity thereof; but the court may grant new trials as in other cases. If the jury find that the defendant has not been guilty of any of the acts so charged against him, or if the plaintiff or his personal representative fail to appear and show cause upon the return of said summons, the defendant or his personal representative, upon executing and acknowledging a bond, with good security, to be approved by said court, conditioned to pay all costs which have been or may be awarded against him in the action or suit in which such judgment or decree was rendered, in case he shall fail to obtain a judgment or decree therein, shall be permitted to make such defence in such action or suit as he might have made if he had appeared therein before the judgment or decree was rendered, except that he shall not be permitted to make any other defence therein than that stated in his petition. But in case any property, real or personal, shall have been sold under such judgment or decree, or under any order of said court, or of the judge thereof in vacation, made in such action or suit, under any of the provisions in this chapter, the title of any *bona fide* purchaser of such property shall in no wise be affected, questioned or impeached by any judgment or decree recovered in such action or suit by such defendant or his personal representative, but such title shall be and remain as valid and effectual, to all intents and purposes, as if the judgment, decree or order, under which the said property was sold, had remained in full force. Nor shall the title of any such purchaser be in any manner affected or impeached by any error or informality in the proceedings under which such judgment, decree or order was rendered or made, or by any defect or informality in the deed of the sheriff or other officer or person for any real estate sold under such judgment, decree or order. But this section shall not apply to any case in which the petitioner or his descendant was served with a copy of the attachment, or with process in the suit

Affidavit of plaintiff.

Issue.

Effect of verdict.

Title of BONA FIDE purchaser unaffected.

Informality not to affect such title.

Exceptions to section.

in which it issued, more than sixty days before the date of the judgment or decree, or to any case in which he appeared and made defense."

"28. On any rehearing or new trial had under the preceding section, if the judgment or decree be for the defendant, the court may order the plaintiff in the original suit to restore any money paid to him under his judgment or decree therein, with interest from the date of such order, to the defendant or his personal representative, and may enter a judgment or decree against him therefor, and if the defendant or his personal representative fail to recover on such rehearing or new trial, the original judgment or decree shall be confirmed, and in either case costs shall be adjudged to the prevailing party."

Judgment against plaintiff for restitution.

2. Section thirteen of chapter one hundred and seventy of the code of Virginia, second edition, is hereby amended and re-enacted so as to read as follows:

"13. Any unknown party or other defendant, who was not served with process and did not appear in the case before the date of such judgment, decree or order, or the representative of such, may, within five years from that date, if he be not served with a copy of such judgment, decree or order more than one year before the end of said five years, and if he was so served, then, within one year from the time of such service, file his petition to have the proceedings reheard in the manner and form provided by section twenty-seven of chapter one hundred and fifty-one of said code, and not otherwise; and all the provisions of that section are hereby made applicable to proceedings under this section."

Rehearing where process not served.

CHAP. 30.—An ACT to provide for the Qualification of Officers in Morgan, Berkeley and Jefferson Counties.

Passed February 13, 1865.

Be it enacted by the Legislature of West Virginia:

1. The governor is hereby authorized to appoint one commissioner in and for each of the counties of Morgan, Berkeley and Jefferson; and any officer heretofore elected or appointed to any office for either of said counties or any township thereof, may take the proper oaths of office and give his official bond, if such bond be required by law, before the commissioner so appointed for such county.

Appointment of commissioners to qualify officers.

2. The bond, if approved by the commissioner, shall be returned by him, with his approval endorsed, to the secretary of the state, to be filed in his office.

Bond to be filed.

CHAP. 31.—An ACT in relation to the Appointment and Compensation of Sheriffs in certain unorganized Counties.

Passed February 13, 1865.

Be it enacted by the Legislature of West Virginia:

1. The circuit judge of the fifth circuit may appoint a sheriff for the county of Pocahontas; and the judge of the seventh circuit may appoint

Sheriffs in counties of ninth district.

sheriffs for the counties of Greenbrier, Monroe, Mercer, McDowell and Nicholas; who shall hold their offices and perform all the duties thereof until sheriffs are elected by the people and qualified according to law, for such counties respectively. Bond shall be given by any sheriff so appointed, in such penalty as the judge appointing him may prescribe.

Bond.

2. Any sheriff appointed under this act, or under the act passed March third, eighteen hundred and sixty-four, entitled "an act supplementary to the act passed July eighth, eighteen hundred and sixty-three, entitled 'an act to provide for the trial of offenses committed in counties in which the administration of justice is interrupted by war or insurrection,'" who shall perform any services, shall receive double the compensation now allowed by law for similar services.

Compensation.

Residence.

3. All sheriffs appointed by judges for unorganized counties shall be residents of or refugees from the counties for which they are appointed, but where, on account of armed rebels being in possession of any such counties, the sheriffs so appointed may remove to any other county, until it is safe for him to return to his own county, it shall be lawful for him to execute or transact any business pertaining to his office at any time in the county for which he was appointed.

CHAP. 32.—An ACT to amend the Law in relation to a Distribution of the Capitation Tax.

Passed February 14, 1865.

Be it enacted by the Legislature of West Virginia:

1. The first and second sections of chapter one hundred and nineteen of the acts of eighteen hundred and sixty-three, are hereby repealed, and the third section is so amended as to read as follows:

Requisition of state superintendent of free schools.

"3. Upon the receipt from the auditor, of a statement of the amount due each county from the capitation tax of eighteen hundred and sixty-one, eighteen hundred and sixty-two and eighteen hundred and sixty-three, the state superintendent of free schools shall draw his requisition upon the auditor, in favor of the treasurers of the several counties, for the use of free schools, for such amounts as they are respectively entitled to receive."

CHAP. 33.—An ACT to authorize the Governor to employ additional Counsel in a certain Cause pending in the Supreme Court of Appeals of this State.

Passed February 15, 1865.

Be it enacted by the Legislature of West Virginia:

Counsel in case of Campbell vs. Caldwell.

The governor of this state is authorized to employ additional counsel, if he shall deem it necessary, to aid the counsel authorized by law in protecting the interest of the state in a certain cause pending in the supreme court of appeals of this state, in which Alexander Campbell, jr., is appellant and George W. Caldwell is appellee, and to pay such additional counsel out of the civil contingent fund.

CHAP. 34.—An ACT authorizing the present and former Sheriffs of Ohio county to Pay certain Moneys to the Treasurers of Ritchie, Triadelphia, Liberty and Richland Townships, in said county.

Passed February 16, 1865.

Be it enacted by the Legislature of West Virginia:

How school money to be paid to townships.

1. All moneys which have been heretofore appropriated for the purpose of carrying on schools within the townships of Ritchie, Triadelphia, Liberty and Richland, in Ohio county, by the school commissioners of said county, and which are still held by the sheriff of said county, or by any former sheriff or sheriffs of said county as treasurers of the school commissioners of said county, shall be paid to the township treasurers of the respective townships in which such schools are located, on the order of the school superintendent of said county, subject to the same conditions as are provided for the payment to said treasurer of other school funds in the forty-first section of the "act providing for the establishment of a system of free schools," passed December tenth, eighteen hundred and sixty-three.

Duty of clerk of school commissioners.

2. It shall be the duty of the late clerk of the school commissioners of Ohio county, on or before the first day of April, eighteen hundred and sixty-five, to examine the accounts of school funds of the present and late sheriffs of Ohio county, comparing them with the appropriations which have been made by said commissioners, and with the vouchers which shall be exhibited by said sheriffs, to ascertain the amounts which may be due to any or all of the schools of such appropriations, and to certify such amounts in detail to the county superintendent of free schools in said county.

CHAP. 35.—An ACT to enable the Banks of this State to become Banking Associations under the Laws of the United States.

Passed February 17, 1865.

Be it enacted by the Legislature of West Virginia:

Surrender of state charter.

1. Any bank of circulation now doing business in this State, which becomes an association for banking under the laws of the United States, shall be deemed to have thereby surrendered its state charter, and shall no longer continue the business of banking within this State under the laws thereof.

Issue of circulation after surrender.

2. Any such bank may issue or reissue its circulating notes authorized by the law of this State for six months after it has so surrendered its charter; but if after the expiration of the said six months, any such bank issue or reissue, with intent that the same shall be circulated as currency, any note, bill, paper or thing, other than such as are authorized by the laws of the United States, it shall be deemed an unchartered company within the meaning of chapter sixty of the Code of Virginia, second edition.

What acts may be done after state charter is surrendered.

3. Such bank, notwithstanding the surrender of its state charter, may sue and be sued in its corporate name, and in that name do all lawful acts for the purpose of collecting its debts, prosecuting and defending its rights, disposing of, conveying and transferring its property and claims, discharging its liabilities and winding up its affairs, as if the charter remained in full force.

Consent of the stockholders—how given.

4. The owners of two-thirds of the capital stock of any bank of circulation doing business in this State may, either by vote in a meeting of stockholders duly called and held, or by signing an agreement or agreeements to that effect, authorize a majority of the directors, or of the directors of the parent bank, if it be a bank having branches, to execute the articles of association and organization certificate mentioned in the forty-fourth section of the act of congress approved June third, eighteen hundred and sixty-four, entitled "an act to provide a national currency, secured by a pledge of United States bonds, and to provide for the circulation and redemption thereof," and to change and convert the said bank into a national association under the said act.

Same subject.

5. At such meeting of stockholders, every share shall have one vote and the vote of any stockholder may be cast in person or by proxy. Such agreement may be signed on behalf of any stockholder by his attorney in fact. Any executor, administrator, guardian or committee holding stock, may authorize such change and conversion without incurring any personal responsibility thereby.

Notice of the intended conversion.

6. When any such change and conversion shall have been authorized, as aforesaid, the cashier shall publish notice thereof once a week at least four weeks successively, in some newspaper printed at the seat of government, and in such other newspaper or newspapers, if any, as the directors may order.

Compensation to dissenting stockholders.

7. The circuit court of the county in which the said bank is located, or in which the parent bank is located, if it be a bank having branches, may, on the petition of any stockholder, ten days' notice of such petition having been given to the cashier, proceed to ascertain, upon the report of one or more commissioners, to be appointed by the court for the purpose, the fair market value of the shares of the said bank at the time when the last dividend was declared. The report and proceedings of the commissioners shall be subject to exceptions by any person interested, in like manner as those of commissioners in chancery, and shall be of no validity till confirmed by the court; but notice of the proceedings before the commissioners shall be sufficient if given to the cashier. Within sixty days after the value of the shares is ascertained as aforesaid, the said bank shall cause every stockholder who has not authorized the change or conversion to be paid for his shares according to such valuation, with interest thereon from the time when the last dividend was declared; and the shares so paid for shall be thereby transferred to the said bank.

8. Where there is any stock in such bank belonging to this State,

or the literary fund or board of public works, or applicable to the support of free schools, a majority of the directors, or of the directors of the parent bank, if it be a bank having branches, are hereby authorized, so far as the said stock is concerned, to execute the articles of association and organization certificate, and to change and convert the said bank into a national association pursuant to said act of congress; and such stock shall be computed in making up the two-thirds necessary to confer the authority aforesaid.

Consent given on behalf of state stock.

9. Whenever, in adjusting the shares in any bank surrendering its charter as aforesaid, to the value of the shares of the national association into which it is changed and converted, there shall be any fractions of shares, the value of such fractions shall be ascertained from the valuation fixed as before provided, for the shares of the refusing stockholders; or if there be no refusing stockholder, or the value of the shares of refusing stockholders has not been ascertained as aforesaid, then the valuation of such fractions shall be according to the par value of the share. Upon the payment of such valuation, the fractions so paid for shall be thereby transferred to the bank.

Fractional shares.

10. Nothing herein contained shall be construed to prevent such bank from acquiring by purchase, or transfer by agreement the shares of any refusing stockholder or any fractions of shares.

Purchase of shares and fractions by agreement.

11. The capital stock of such bank shall be reduced to the extent of the par value of the shares to which it becomes entitled as aforesaid; and may be further reduced to any amount fixed by authority of the stockholders consenting to the change and conversion as aforesaid, or by the directors or a majority of them, if no order on the subject be made by the said stockholders; and such reduction may be made either by the purchase and extinguishment of shares or by reducing the par value of the share, or by both methods. Or, by like authority, the capital stock may be increased by the sale of additional shares at such price as may be agreed upon.

Reduction of capital.

Increase in capital.

12. The bonus and tax imposed by the laws of this state upon the bank so surrendering its charter, shall be paid by it into the treasury of the state, in proportion to the time from the first day of February preceding such surrender until it became a national association under the laws of the United States.

Bonus and tax.

13. When the charter of any bank is surrendered as aforesaid, all its assets, real and personal, and its claims, shall immediately and by act of law, without any conveyance or transfer, become the property of the national association into which it is changed and converted; and the said national association shall be subject to all the pre-existing liabilities of such bank.

Transfer of rights and liabilities from the old to the new institution.

Chap. 36.—An ACT to authorize the Superintendent on the Western end of the Wheeling and Fairmont Turnpike to regulate the Tolls on the said road.

Passed February 17, 1865.

Be it enacted by the Legislature of West Virginia:

Tolls may be suspended for six months.

The superintendent for the western end of the Wheeling and Fairmont turnpike is hereby authorized, when in his judgment said road is not in a condition to justify the collection of tolls thereon, to suspend such collection for such time as he may deem proper, not exceeding altogether six months in any one year.

Chap. 37.—An ACT to allow suits heretofore cognizable in Pocahontas and Webster Counties to be brought in Upshur County.

Passed February 17, 1865.

Be it enacted by the Legislature of West Virginia:

Suits may be brought in Upshur instead of Pocahontas and Webster.

1. At suit at law or in equity which, according to the one hundred and sixty-ninth chapter of the code of Virginia, second edition, might be brought in the county of Pocahontas or Webster may hereafter be brought in the county of Upshur; but nothing herein contained shall be construed to affect any provision of law for the limitation of suits.

Jury costs in such cases.

2. No jury shall be called or impanneled in any action or suit brought in the county of Upshur by virtue of this act, until and unless the plaintiff pay to the clerk of the court twelve dollars to defray jury costs; which sum the said clerk shall pay into the treasury of the said county of Upshur, and if judgment be rendered for the plaintiff, shall tax the same in the costs to be recovered by him in lieu of the sum heretofore in such case allowed by law. If judgment be rendered against the plaintiff, no jury costs shall be taxed against him if he has paid the sum of twelve dollars to the clerk as aforesaid.

Chap. 38.—An ACT to provide for the Sale of the Property of Minors in certain cases.

Passed February 18, 1865.

Be it enacted by the Legislature of West Virginia:

Petition by guardian.

1. If the guardian of any minor think that the interest of the ward will be promoted by a sale of his estate, or any estate in which the minor is interested with others, infants or adults, whether the estate of the minor, or of any of the persons interested, be absolute or limited, and whether there be or be not limited thereon any other estate, vested or contingent, such guardian may apply by petition in a summary way to the circuit court of the county in which the estate proposed to be sold, or some part thereof, may be, stating plainly all the estate, real and personal, belonging to the minor, and all the facts calculated to show the propriety of the sale.

Verified by affidavit.

The petition shall be verified by the oath of the plaintiff; and the minor and all others interested shall be

Who must be parties.
Notice of petition

made defendants, and also all those who would be the heirs or distributees of the minor, if he were dead; and the defendants shall have ten days' notice previous to the hearing of such petition.

Guardian AD LITEM.

2. To every such minor there shall be appointed a guardian *ad litem*, who must be present at the hearing.

In what case sale may be ordered.

3. If it be clearly shown by the petition, exhibits and evidence introduced, that the interest of the minor will be promoted by the sale, and the court is of opinion that the rights of no person will be violated thereby, it may order a sale of the estate or any part thereof, taking for the purchase money, when the sale is on credit, ample security. And such sale, as the court may prescribe, may be at public auction or by private sale, on such terms and in such parcels as shall seem most beneficial to the minor.

Terms of sale.

Guardian, &c., not to purchase.

4. At such sale neither the guardian or guardian *ad litem* shall be a purchaser, directly or indirectly.

Application of proceeds.
Bond to be given by guardian.

5. The proceeds of sale shall be invested or applied, under the direction of the court, for the use and benefit of the persons entitled to the estate so sold. And, before any such sale is made, the guardian shall enter into bond, with approved security, in open court, in a penalty equal to double the value of the estate to be sold, conditioned for the faithful application of the proceeds of sale according to the order; which bond may be made payable to the state; and the court may thereafter order new bond, with other security to be given, if deemed necessary; and suits may be prosecuted from time to time upon any such bond, in the name of the state, for the benefit of any person injured by a breach of the condition, until damages be recovered equal to the penalty; the party for whom such suit is brought being responsible for costs, in like manner as if he were plaintiff in the action.

Conveyance to purchaser.

6. Whenever the guardian makes sale of any estate as herein provided, he may be authorized by the court to execute a conveyance to the purchaser with special warranty upon payment of the purchase money, or the court may order such sale to be reported for confirmation, and when confirmed, direct such conveyance to be made by the guardian or a commissioner.

Effect of such conveyance.

7. Every such conveyance shall be as effectual in law as if the same were made by the minor when of lawful age.

When sale not to be ordered.

8. But no estate of any minor shall be sold under this act against the provisions of any will or conveyance by which the estate was devised or ganted to such minor.

Former mode of proceeding may be adopted.

9. Nothing herein contained shall be construed to prevent the disposal of the estates of infants and others, in the manner and under the regulations prescribed in chapter one hundred and twenty-eight of the Code of Virginia, serond edition.

Attorney's fee.

10. No attorney's fee shall be taxed in the costs of any proceeding under this act.

CHAP. 39.—An ACT amending Section 13 of Chapter 88 of the Acts of 1863.

Passed February 18, 1865.

Be it enacted by the Legislature of West Virginia:

Section thirteen of chapter eighty-eight of the Acts of eighteen hundred and sixty-three, is hereby amended by adding at the end thereof the following:

Supervisors to state county receipts, expenditures and debt.

And it shall be the duty of said board, at every such meeting, to make out a detailed statement of the receipts and expenditures for county purposes during the preceding year, and of the county debt, if any, and for what purpose created. And to post the same at some public place in each of the organized townships of their county, within fifteen days after their adjournment.

CHAP. 40.—An ACT to repeal Chapter 38 of the Code of Virginia.

Passed February 18, 1865.

Be it enacted by the Legislature of West Virginia:

Chapter thirty-eight of the Code of Virginia, second edition, entitled "of taxes on licenses," is hereby repealed.

CHAP. 41.—An ACT to regulate the Jurisdiction of the Circuit Courts in certain cases.

Passed February 20, 1865.

Be it enacted by the Legislature of West Virginia:

When jurisdiction of court of one county may be exercised in another.

When there is no judge qualified by law to hold the circuit court of any county, or the circuit court of any county cannot safely and without interruption be held therein, the jurisdiction of such circuit court, in relation to the probate of wills, suits and controversies testamentary, the appointment, qualification, bonds and accounts of guardians, curators, committees of insane persons and personal representatives of deceased persons, and the revocation of their powers, may be exercised by the circuit court of any other county of the same, or of an adjoining circuit.

CHAP. 42.—An ACT to provide for Recording, in the office of the Secretary of the State, Deeds and other Writings relating to Property in Counties in which no records are kept.

Passed February 20, 1865.

Be it enacted by the Legislature of West Virginia:

1. Any writing mentioned in the first section of chapter one hundred and twenty-one of the Code of Virginia, second edition, or the one hundred and nineteenth chapter, or in the one hundred and

What writings may be recorded in office of secretary.

Effect of writing or copy as evidence.

eighteenth chapter of the said code, which is to be or may be recorded in any county of this state, in which, by reason of war or insurrection, no records are kept, may be admitted to record in the office of the secretary of the state as to any person whose name is signed thereto, when it shall have been acknowledged by him, or proved by two witnesses as to him, before the secretary of the state, or when the same shall have been acknowledged or proved, and certified in the manner required by law. When any writing admitted to record in the office of the secretary of the state, or a certified copy thereof, is offered in evidence, it shall not be necessary to prove that no records were kept in the proper county by reason of war or insurrection, at the time the same was so admitted to record; but it shall be so presumed, unless evidence to the contrary be produced.

Duty of secretary.

Tax on writings.

Fees of secretary.

2. It shall be the duty of the secretary of the state, upon being satisfied at any time, that no records are kept in a county by reason of war or insurrection, to admit to record all writings which, as the law now is, might be recorded in such county, and to record the same in a well bound book to be provided at the public expense, and kept in his office. Writings admitted to record under this act, shall be subject to the same tax as if they were recorded in the counties in which they might otherwise be recorded, to be paid to the secretary before they are admitted to record. The secretary shall account for and pay into the state treasury quarterly, all taxes received by him under this act. The secretary shall charge and receive the same fees for recording any writing under this act, that a recorder would be entitled to charge and receive for similar services.

Effect of records.

3. The recording of any writing admitted to record under the provisions of this act, shall have the same effect as if such writing had been recorded in the county wherein it might otherwise have been recorded, until records can again be kept in such county, and no longer.

Effect of certified copies.

4. Copies of writings admitted to record by the secretary of the state pursuant to this act, certified by him under his hand to be true copies, shall have the like effect as copies certified by a recorder, of writings duly recorded in his office; and the secretary may charge the same fees for such copies as the recorder.

Removal of writings.

Certified copy may be recorded.

5. The governor, whenever he is satisfied that the writings recorded in the office of the secretary of the state as aforesaid, relating to property in any county, or which, as the law now is, should be recorded therein, can safely be removed to and kept in such county, may order the said writings to be delivered to the recorder thereof; and the recorder shall thereupon duly record the same in his office, in like manner and with like effect, as if the same had been originally admitted by him to record, and may charge the same fees for such recording. And if any original writing admitted to record by the secretary of the state, be lost or destroyed, a copy certified by the secretary, under his hand may, at any time, be admitted to record, and recorded in the proper county, in place of such original.

CHAP. 43.—An ACT to alter part of the division line between the Counties of Randolph and Upshur.

Passed February 21, 1865.

Be it enacted by the Legislature of West Virginia:

Alterations of lines.

1. The division line between the counties of Randolph and Upshur is hereby altered so as to run as follows: Beginning at the forks of the Middle Fork river, thence a straight line to the top of Kelly Knob, thence a straight line to Rader's Spring, at the southeast corner of the Upshur county line; and so much of the county of Randolph as is included within said line, is hereby annexed to, and made a part of the county of Upshur.

Addition to Upshur.

When to be of force.

2. The annexation herein provided for, shall not be of force until the same is ratified by a vote of the qualified voters residing within the boundary described in the preceding section, in the manner hereinafter provided, nor until the surveyor of the county of Upshur shall run and mark the said lines, and make three plats thereof, each of which he shall duly certify and forward one to the secretary of the state, another to the recorder of the county of Randolph, and the third to the recorder of the county of Upshur, who shall file and carefully preserve the same in their respective offices.

Plats of lines.

Fees of surveyor.

3. The account of the said surveyor for his fees and expenses incurred under the provisions of this act, shall be audited by the board of supervisors, and paid out of the treasury of the county of Upshur.

Poll on question of annexation.

4. On the first Monday in May next, a poll shall be opened at the regular place or places of voting, within the said boundary, as follows: "For annexation," and "Against annexation," which poll shall be opened at nine o'clock, A. M., and closed at sun-down. If two-thirds of all the votes cast shall be "for annexation," then this act shall be of force from and after the first day of August, eighteen hundred and sixty-five, in case all the other provisions of this act shall have been complied with, and if not, then from and after the day on which such provision shall be complied with. The taking of said poll shall be conducted, certified and returned in the manner provided by law for conducting, certifying and returning the polls at elections for state and county officers, except that a copy of said poll shall be certified to the board of supervisors of the county of Upshur. It shall be the duty of the board of supervisors of the said county of Randolph to convene within ten days after the taking of said poll, at which time they shall declare the result of the vote so taken, and enter the same in their minutes, and certify and transmit a copy of such entry to the board of supervisors of the county of Upshur.

Result of poll.

Manner of taking poll.

Duty of supervisors of Randolph.

CHAP. 44.—An ACT for the establishment of a Union School in the City of Parkersburg, and to provide for the erection of School Buildings therein.

Passed February 21, 1865.

Be it enacted by the Legislature of West Virginia:

1. The board of education for the township of Parkersburg, in Wood county, is hereby authorized to call a meeting of the qualified

voters of the city of Parkersburg, at the earliest day it may deem proper after the passage of this act, having given notice thereof in manner and form as prescribed in section ten of "an act providing for the establishment of a system of free schools," passed December tenth, eighteen hundred and sixty-three, which meeting shall be organized and conducted as provided for the annual township meetings; and when so organized, the board of education shall submit the proposition for the establishment of a union school, with the reasons for the same, together with a carefully prepared estimate of the cost; and if, after full deliberation and discussion, a majority of the qualified voters present and voting, shall decide in favor of the proposition, such school shall be established.

Board of education to submit to voters proposition for school.

2. The board of education may levy, if authorized by a majority of the voters as above prescribed, a tax of not exceeding in any one year, five mills on every dollar on the property of said city for the purpose of purchasing ground and erecting school buildings for the education of the youth of said city. The powers of the board of education in respect to said levy, to be restricted only by section forty-eight of the act above referred to.

Tax for building purposes.

3. The board of education of said township, shall make the levy aforesaid only on the returns of the assessors appointed by the city of Parkersburg; but may appoint a collector who shall report and pay over, after the tax bills shall be placed in his hands by the proper officer, the amount by him collected, to the order of the board of education; such report specifying the purpose in building, to which the money is to be applied.

Appointment of collector of tax.

4. The board may require such bond of the collector as it may deem sufficient, and shall record and report all its proceedings under this act, in the same manner as required by the act aforesaid, and shall be governed by the provisions of said act, except where the same are inconsistent with the provisions of this act.

Powers and duty of board.

CHAP. 45.—An ACT requiring the Banks in this State to redeem their issues in Legal Tender Money of the United States.

Passed February 22, 1865.

Be it enacted by the Legislature of West Virginia:

1. The several banks and their branches in this state, shall, from and after the first day of March, eighteen hundred and sixty-five redeem their circulating notes in legal tender money of the United States, when demanded: Provided, that after the day herein fixed, the said banks or their branches, shall not be compelled to pay said legal tender money for any notes held by or due to any other bank or banking company, which does not redeem its own notes when demanded, in the legal tender money of the United States.

Banks to redeem issue in legal tender money.

Proviso.

2. If any note due from any bank be presented for payment after

Penalty for failure so to redeem.

the said first day of March, eighteen hundred and sixty-five, within the usual business hours, at the bank or office where payable, and be not paid in legal tender money of the United States when so presented, the party presenting the same may, on motion in the circuit court, after ten days' notice, or by warrant before a justice, (according to the amount,) recover from the bank the amount of such note with interest thereon at the rate of twelve per centum per annum, from the time of such failure until paid.

Redemption by branches.

3. It shall be the duty of every branch of a bank, in addition to the redemption required at such branch, to redeem its circulating notes on demand at the parent bank, in legal tender money, and for failure so to redeem the same, the branch in default shall be liable to interest at the rate of twelve per centum, to be recovered in the same manner as prescribed in the second section.

CHAP. 46.—An ACT to Incorporate the Parkersburg and Burning Springs Railroad Company.

Passed February 22, 1865.

Be it enacted by the Legislature of West Virginia:

Names of corporators.

1. James Cook, Jefferson Gibbens, J. N. Camden, D. R. Neal, J. E. Wharton, J. G. Blackford, J. J. Jackson, Jr., Alfred H. Rogers, B. F. Stewart, Abram Enoch, D. N. Wolfe, R. P. Steed, Beverley Smith, M. Woods, Eugene List, S. Newberger, P. D. Gambrill, A. G. Leonard, J. G. Blair, Archibald Russell, A. Dishel, J. R. Murdoch, J. M. Leach, and their associates, successors and assigns, and all who shall become stockholders, when three thousand shares at fifty dollars each shall have been subscribed as hereinafter provided, are hereby made a body politic and corporate, under the name, style and title of the Parkersburg and Burning Springs Railroad Company:- Provided, said subscription shall have been made in good faith, within two years from the passage of this act.

Style of company.

Route prescribed

2. The said company is hereby authorized to construct a railway from the city of Parkersburg, or any point on the Northwestern Virginia Railroad between that city and Petroleum Station, on said road, southerly and westwardly, from said road up the Little Kanawha river, or any of its tributaries, to Burning Springs, and the head waters of the Little Kanawha, and make such sidings, branches and extensions not exceeding ten miles in length, as they may deem necessary and convenient to the development of the mineral and agricultural wealth of the country between the Little and Great Kanawha rivers: Provided, no portion of this road is to be constructed in the valley of Elk River, except to connect with the West Virginia Central Railway Company.

Proviso.

Capital stock.

3. The capital stock of said company may be increased at the option of the stockholders or directors thereof, as the by-laws of the company may provide, to one hundred thousand shares, and the said cor-

poration or directors, or any three of them, may open, or appoint an agent or agents to open books for subscriptions, at any point they may select, to procure said stock, or any portion thereof by them determined.

Subscription therefor.

4. The said books shall be opened and the subscriptions received, in the manner prescribed by the Code of Virginia, second edition, prescribing general regulations for the incorporation of railroad companies. The said company shall be subject to all the provisions and liabilities, and entitled to all the benefits of the aforesaid Code, especially such as are specified in chapters fifty-six, fifty-seven and sixty-one thereof, and of all other general laws now in force relating to railway companies, except so far as the provisions of this act are or may be inconsistent therewith.

Company subjected to provisions of Code of Virginia.

5. Said company shall have power to borrow money, to accept and receive donations in lands, money or other things, from the Congress of the United States, or from other sources, for the purpose of carrying on the object of this act, and to issue proper certificates or evidences of all loans made by it, and to pledge the property of the company for the payment of the same and the interest that may accrue thereon; and the said company shall be required to commence the construction of their said railway within three years from the passage of this act, and shall finish one-fourth thereof within five years from the time of commencement.

Authority to borrow money and receive donations

Commencement and progress of work.

6. The president and directors of the said company, or a majority of them, shall be and are hereby authorized to make and execute bonds or certificates of indebtedness, under the seal of the said company, for such sum or sums, and payable at such time or times, and to sell and dispose of the same on such terms as to the said president and directors may seem proper: Provided, that nothing herein contained shall be taken to authorize the said company to issue anything in the nature of a bank note, or other paper to be used for circulating as a currency.

Authority to issue bonds.

Proviso.

7. So much and such parts of the Code of Virginia hereinbefore recited, or of any act or acts as may be inconsistent with any of the provisions of this act, shall be held not to apply to the company hereby incorporated, as far as the same may affect the charter granted by this act.

Code of Virginia construed.

8. The legislature reserves the right to alter or amend this act, but such alteration or amendment shall not affect or impair the right of the creditors of the corporation to have the property and assets thereof applied in discharge of their respective claims, or of the stockholders to have the surplus which may remain after providing for the debts and liabilities of the corporation, distributed among themselves according to their respective interests.

Right of Legislature to amend this act.

9. The several counties through which the line of the said railroad

Counties authorized to take stock.

or any branch or extension thereof may pass, are hereby authorized to subscribe to the capital stock of said company to the amount not exceeding two thousand shares each.

CHAP. 47.—An ACT concerning the Fiscal Year.

Passed February 22, 1865.

Be it enacted by the Legislature of West Virginia:

Commencement and end of fiscal year.

1. The fiscal year shall hereafter commence on the first day of January, and end on the thirty-first day of December, and the fiscal year eighteen hundred and sixty-five shall be deemed to have commenced as of the first day of January, eighteen hundred and sixty-five, and shall end on the thirty-first day of December of the same year.

Law repealed.

2. The eleventh section of chapter forty-five of the Code of Virginia is hereby repealed.

CHAP. 48.—An ACT repealing the Acknowledgment of Deeds and other writings, before Justices.

Passed February 22, 1865.

Be it enacted by the Legislature of West Virginia:

Acknowledgments taken by justice out of his township sufficient.

1. Where the acknowledgment of any deed or other writing, or the privy examination of a married woman respecting the same, has been heretofore taken by any justice out of his township, or it does not appear by the certificate of the justice that such acknowledgment or privy examination was taken within his township, the same shall nevertheless be sufficient, unless there be other lawful objection thereto.

Justice EX OFFICIO a notary public for certain purposes.

2. Every justice who is now in office, or may be hereafter elected and qualified, shall be, within his county, by virtue of his office, a notary public to administer and certify oaths, and to take acknowledgments of deeds and other writings, and the privy examination of married women respecting the same; but for those purposes only.

CHAP. 49.—An ACT for the relief of John Slack, late Sheriff of Kanawha County, and his Sureties.

Passed February 22, 1865.

Be it enacted by the Legislature of West Virginia:

John Slack and sureties released from paying two judgments.

John Slack, late sheriff of Kanawha county, and Daniel H. Kline, Samuel Hensley, William Donnelly, Robert Blane, James H. Frey, Samuel Rust, Joseph Friend, and S. Patrick, his sureties, are hereby released from paying a judgment obtained against them in the circuit court of the city of Richmond, bearing date May tenth, eighteen hundred and fifty-nine, for fifteen thousand six hundred and eighty dollars and forty cents, with interest at twelve per centum per annum, and damages and costs, for certain taxes and liabilities alleged to be due the state of Virginia from said Slack as sheriff as aforesaid, for the year eighteen hundred and fifty-seven; and also from a judgment of same court of like date, for sixteen thousand two hundred and sixty-eight dollars and fifty cents, with interest at six per centum per annum and damages and costs, for similar taxes and liabilities for the year eighteen hundred and fifty-eight.

CHAP. 50.—An ACT requiring Oaths in certain cases.

Passed February 23, 1865.

Be it enacted by the Legislature of West Virginia:

What persons required to take oath of allegiance.

1. Any person who shall have heretofore borne arms, or who shall hereafter bear arms against the government of the United States or of this state, or who shall have heretofore accepted or held, or who may hereafter accept or hold any office, civil or military, under any pretended government, either state or federal, in opposition or inimical to the government of the United States or of this state; except such persons as are now in the army of the United States as volunteers, or who have been honorably discharged therefrom, shall take and subscribe an oath to support the constitution of the United States and the constitution of the state of West Virginia, to be filed in the office of the recorder of the county where such person resides.

Penalty for failure to take such oath.

2. Any person embraced in the foregoing section, failing to comply with the requirements thereof, within thirty days after being notified to do so by any person, shall, on conviction, be fined not less than one hundred dollars, at the discretion of a jury, and in addition to such fine may be imprisoned not exceeding thirty days, at the discretion of the court. If any person who may be convicted under the provisions of this section, shall fail for thirty days after such conviction to take and subscribe the oath mentioned in the first section, he shall, on conviction, be fined by a jury at least double the amount of the last fine against him, and may in addition to such fine, be imprisoned, at the discretion of the court, not exceeding sixty days.

Duty of prosecuting attorney.

3. It shall be the duty of the prosecuting attorney in each county to bring to the notice of said courts all such cases as are embraced in the first section of this act, for action thereon.

CHAP. 51.—An ACT to establish a Court of Limited Jurisdiction in the City of Wheeling.

Passed February 24, 1865.

Be it enacted by the Legislature of West Virginia:

Style of court.

1. There shall be established a court of record of limited jurisdiction within the city of Wheeling, to be called "The Municipal Court of Wheeling."

First election for judge.

2. On the fourth Thursday in May, in the year eighteen hundred and sixty-five, and in every fourth year thereafter, there shall be elect-

His term. ed by the voters of the city a judge of the said court, to hold his office until his successor is elected and qualified.

Vacancy. 3. If, for any cause, the office be vacant during the term, such vacancy shall be filled for the unexpired portion of the term by a special election, to be held as soon as practicable at such time as the council of the city may order.

Regulations for election. 4. The regular and special elections for the said judge, except as to the time of holding the same, shall be subject to the same regulations as the elections for mayor and members of the council of the city.

Judge's salary. 5. During his service in office he shall receive from the treasury of the city a salary, to be prescribed by ordinance of the council; but after the salary has been so prescribed, no ordinance increasing or diminishing the same shall take effect until an election to the office has intervened.

Judge's removal. 6. He may be removed from office by the council of the city, two-thirds of the members of each branch concurring in such removal; but before any order or resolution for his removal is passed, he must have reasonable notice of the causes alleged therefor, and an opportunity to be heard in person or by counsel as he may elect.

Police jurisdiction. 7. Where any fine, penalty or punishment may lawfully be imposed for a violation of an ordinance of the city, the municipal court shall have exclusive original jurisdiction of the case. How regulated. The proceedings in such case shall be by summons on behalf of the city as plaintiff, and shall conform to the regulations, so far as they are applicable, respecting civil suits and proceedings before justices. But the judge, for good cause shown, may, by endorsement on any such summons, order the defendant or defendants to be arrested and brought forthwith before him to be dealt with according to law.

Justices' jurisdiction conferred 8. The said court shall also, within the city, have the same jurisdiction and powers as a justice, within his county, in relation to the apprehension, examination, commitment, or admitting to bail, of any person charged with a criminal offense, whether committed in said city or elsewhere; And regulated. and in the exercise of such jurisdiction and powers shall be subject to the same regulations.

When and where court to be held. 9. For the exercise of the jurisdiction and powers conferred by the last two sections, (hereinafter called *the police jurisdiction* of the said court,) the court shall be held at such times, and at such places in the city, as to the said judge may seem convenient and proper.

Absence or inability of judge to act. 10. When the said judge is, from sickness or other cause, incapable of acting, or is absent from the city, or the office is vacant, the mayor of the city, or some person appointed for the purpose by the council, shall exercise the police jurisdiction of the said court.

Civil jurisdiction. 11. The said court shall also have, within the city, the same jurisdiction and powers in civil suits and proceedings at law, (but not in chancery,) where the amount in controversy exceeds one hundred dollars, exclusive of interest and costs, or the possession or title of real or personal estate is concerned, as the circuit court of Ohio county now has or may hereafter be vested with, but in the following cases only:

Same as that of Ohio county circuit court in certain cases only.

I. Where the defendant or one of the defendants resides in the city;

II. Where the cause of action arose within the city;

III. Where the property real or personal, the title or possession of which is in controversy, or some part of such property, is in the city.

IV. Where the defendant or one of the defendants, being a nonresident of the state, is found in the city, or has estate or effects therein; and any demand against a resident of the city, or a corporation or firm doing business therein, or any stock or share in the capital of such corporation or firm, shall be deemed effects in the city within the meaning of this clause.

12. The said court shall also have jurisdiction, without reference to the amount in controversy, of civil suits and proceedings at law instituted to recover any taxes, debt or demand alleged to be due the said city, or to recover damages for breach of the condition of any bond made payable to the city, or to recover compensation for damage alleged to be done by the defendant to any property, real or personal, belonging to the city.

Jurisdiction of suits for anything due city.

13. For the exercise of the jurisdiction and powers conferred by the last two sections, (hereinafter called *the civil jurisdiction* of the said court,) monthly sessions of the said court shall be held, commencing on the third Monday of every month and continuing until the court is adjourned by the judge thereof to the succeeding term. But if any such term be not commenced on the day hereby appointed, or the Tuesday or Wednesday next after the same, all suits and proceedings then pending therein shall stand continued, without any special order to that effect, to the succeeding term.

Monthly sessions for trial of civil suits.

14. The said monthly sessions shall be held at such place within the city as the council may from time to time provide for the purpose. The council shall also provide an office in the city for the clerk of the said court.

Where held.

15. Rules shall be held in the clerk's office of the said court, commencing on the second Monday of every month, and the said rules may continue for three days.

Rules.

16. Questions of fact to be tried by a jury in the said court, either in the exercise of its police or civil jurisdiction, shall be tried by a jury of six persons, under the regulations, so far as they are applicable, respecting such trials before justices.

Trial by jury.

17. In other respects the said court and its officers, in the exercise of its civil jurisdiction, shall be governed by the usages and principles of law applicable to similar cases in the circuit courts; but when pursuant to the twelfth section, the said court shall have jurisdiction of

Court to follow usages of circuit courts, Or justices.

any civil suit or proceeding in which the amount claimed, exclusive of interest and costs, does not exceed one hundred dollars, it may adopt the mode of proceeding prescribed for civil suits before justices.

Jurisdiction presumed.

18. It shall not be necessary in any suit or proceeding in the said court, that the facts authorizing it to take jurisdiction of the case should be set forth upon the record, but jurisdiction shall be presumed unless the contrary appears by the record.

Issue and execution of process.

19. All process, executions, rules and orders of the said court, whether issued in the exercise of its police or civil jurisdiction, shall be signed by the judge or clerk thereof. Such process and executions shall be directed to the sergeant of the city, and be executed by him or one of his deputies; except that the judge of the said court may at any time appoint a special officer to act in any case, or to serve any particular process, execution, rule or order. In the execution of the process, executions, rules and orders of the said court, the sergeant, deputy or special officer shall have the same powers and rights, be subject to the same liabilities, govern his proceedings by the same rules and principles of law, and be entitled to the same fees, as the sheriff of the county in like cases; and such fees may be collected by the sergeant or his deputies, in like manner as the sheriff is by law authorized to collect his fees. The sergeant and his sureties shall be liable for the acts and omissions of his deputies, in like manner as the sheriff and his sureties are for his deputies.

Powers and right of sergeant, &c.

Council may substitute salary for fees of sergeant.

30. It shall be lawful for the council of the city, notwithstanding anything contained in the preceding section to the contrary, to prescribe by ordinance such compensation or salary as they may deem reasonable for the sergeant of the city, in lieu of any fees which would otherwise accrue to the said sergeant or his deputies from the cases within the police jurisdiction of the said court; and in such case, the said sergeant or his deputies shall, nevertheless, collect the said fees as aforesaid, but shall account for and pay over the same to the treasury of the city.

Bond of sergeant.

21. The sergeant of the city shall give bond, to be approved by the said court or judge thereof, in the penalty of ten thousand dollars, payable to the state of West Virginia and conditioned for the faithful discharge by him of the duties of his office, which bond shall be filed in the clerk's office of the said court; and the provisions of the act relating to official bonds, passed June twenty-ninth, eighteen hundred and sixty-three, shall be held applicable thereto.

Clerk of court.

22. The council of the city shall provide by ordinance for the election or appointment, term of office, and removal when necessary, of a clerk of the said court, who shall perform the same duties in relation to the civil jurisdiction thereof that the clerk of the circuit court, by the usages and principles of law, is required to perform for that court; and such services in relation to the police jurisdiction of the municipal court as may be directed by the judge thereof, or be prescribed by rule or order of the said court.

23. For services performed by him by virtue of his office, in relation to the police jurisdiction of the municipal court, the clerk thereof may charge the same fees as a justice for similar services; and in other cases the same fees as the clerk of the circuit court. And such fees, in any case, shall be collected and accounted for by the sergeant of the city, in like manner as fees of the clerk of the circuit court are collected by the sheriff. The council of the city may allow the clerk of the municipal court, out of the treasury of the city, such further compensation, if any, as they deem reasonable. Clerk's fees.

24. The clerk of the municipal court shall give bond, to be approved by the said court or the judge thereof, in the penalty of three thousand dollars, payable to the state of West Virginia and conditioned for the faithful discharge by him of the duties of his office; which bond shall be filed in the office of the recorder of Ohio county, and the above mentioned act relating to official bonds shall be held applicable thereto. Bond of the clerk

25. A seal shall be provided for the said court by the council of the city, and the same may be altered or renewed as the court shall order. Full faith and credit shall be given to the records of the said court, and the certificates of its judge or clerk, whether the seal of the court be affixed thereto or not, in like manner and with the same effect as if the same were records of a circuit court, or certificates of the judge or clerk of a circuit court, similarly authenticated. Seal. Credit given to records.

26. The judge and clerk of the municipal court are hereby authorized, within the said city, to administer and certify oaths in any case in which such oaths may lawfully be administered. Judge and clerk may administer oaths.

27. In cases within the police jurisdiction of the municipal court, the judgment of the said court shall be subject to appeal to the circuit court of Ohio county, in like manner and subject to the same restrictions and regulations as if it were the judgment of a justice; except that no such appeal shall lie or be granted, unless some counsel practising in the said circuit court certify that he is satisfied there is error in law or fact in the said judgment to the prejudice of the party applying for such appeal. If the case involves the validity of an ordinance of the city, or the right of the city to levy a tax, an appeal shall lie, or may be granted, without regard to the amount in controversy. In any case in which an appeal is taken or granted on behalf of the city, no undertaking or security shall be required. Appeals in police cases.

28. In cases within the civil jurisdiction of the municipal court, after a final judgment or order of the said court, any party thereto who is aggrieved by such judgment or order, may present his petition to the circuit court of Ohio county or the judge thereof, for a writ of error or supersedeas to the said judgment or order. With such petition there shall be a transcript of the record of so much of the case as to enable the circuit court to decide properly whether such petition ought to be granted or not, and on what terms, and to decide all questions arising in the case if the petition be granted. The party intend- Appeals in civil cases.

ing to petition shall notify the opposite party or his counsel of such intention, and so much of the record shall be copied as any party may desire, with the exceptions specified in the seventh section of chapter one hundred and eighty-two of the Code of Virginia, second edition. The petition shall assign errors appearing by the record, and shall not be considered by the circuit court unless some counsel practising therein certify that, in his opinion, there is error to the prejudice of the petitioner in the said judgment or order.

Same subject.

29. Upon such petition the said circuit court may allow a writ of error or supersedeas, with like effect and upon like conditions as such writs may be granted by the supreme court of appeals to final judgments of the circuit courts; and the proceedings to be thereupon afterwards had shall be governed by like usages, rules and principles of law, except that no record, statement of the case or assignment of errors shall be required to be printed, nor shall either party be required to furnish a copy thereof to the other or his counsel.

Limitation of appeals.

30. No petition shall be presented for a writ of error or supersedeas to any final judgment or order of the said municipal court after two years have elapsed from the date of such judgment or order; and any writ of error or supersedeas allowed to such a judgment or order shall be dismissed, if it appear that two years or more have elapsed since the date of such judgment or order before the record of the case was delivered to the clerk of the circuit court, or before bond was given by the appellant according to the condition on which the writ was allowed.

How executions obtained from circuit court.

31. A transcript of any judgment rendered by the municipal court, certified by the judge or clerk thereof, may be filed, by any party interested, in the clerk's office of the circuit court of Ohio county, and the clerk of the said circuit court may issue executions thereon in like manner and with like effect as if such judgment had been rendered by the said circuit court, but such execution shall not be levied within the city. Judgments rendered by the municipal court may be docketed in the judgment docket kept in the recorder's office of any county, in like manner and with like effect as other judgments; and upon every judgment of the municipal court, the judgment creditor shall be entitled to all liens and remedies to secure or recover the same against any person whatsoever, to which he would be entitled if it were a judgment of the circuit court of Ohio county.

Office of alderman abolished.

32. The office of alderman of the city of Wheeling shall be abolished from and after the first day of July next. The dockets and papers of the said aldermen shall after that date be filed in the clerk's office of the said municipal court, and the said clerk may issue executions or other proper process to enforce any unsatisfied judgments theretofore rendered by any such alderman.

CHAP. 52.—An ACT to amend the Charter of the West Virginia Central Railway Company.

Passed February 24, 1865.

Be it enacted by the Legislature of West Virginia:

Sections 8, 9, and 12 re-enacted.

1. Sections eight, nine and twelve of the act passed March second, eighteen hundred and sixty-four, entitled "an act to incorporate the West Virginia Central Railway Company," are hereby amended and re-enacted so as to read as follows:

Within what time the northern section of the road is to be put in operation.

"8. The said company shall notbe required to construct and equip that portion of said railway which lies north of the Baltimore and Ohio Railroad, until the state of Pennsylvania, or some company incorporated under the laws thereof, shall make provisions for the construction and equipment of a similar railway through the state of Pennsylvania connecting therewith, and enter, in good faith, upon the construction thereof; and as soon as a railway shall be commenced in the said state of Pennsylvania to connect with the railway authorized by this act, then the West Virginia Central Railway Company shall commence the construction of that portion of their railway lying between the Pennsylvania line and the Baltimore and Ohio Railroad, and thereafter proceed to complete and equip the said portion, so that the same shall be in operation for the transportation of passengers and freight from the Pennsylvania line to the Baltimore and Ohio Railroad, as soon as the railway in the state of Pennsylvania intended to connect therewith shall be in operation from the point of connection at the Pennsylvania line to some other railroad connecting therewith: Provided, that, if the West Virginia Central Railway Company, after it is organized under the provisions of this act, should ascertain by actual survey or otherwise, that the purposes of the company connot be better attained by a change of the route as authorized by the second section of this act, and should determine to locate the route through the county of Preston, the said Central Railway shall intersect the Baltimore and Ohio Railroad at some point east of Grafton, in the county of Taylor or Preston.

If the route thro' Preston county be adopted, where the B. & O. R. R. may be crossed.

Subscription on behalf of the state.

"9. It shall be lawful for the board of public works, at any time after the passage of this act, to subscribe on the part of the state to the capital stock of the West Virginia Central Railway Company, eight thousand shares; which shares shall be paid for in the transfer by said board, of all the work or works and improvements made by the state of Virginia on state account, on that portion of the Covington and Ohio Railroad from the town of Charleston, in the county of Kanawha, to the terminus of the line of the location of the said Covington and Ohio Railroad westward. The said eight thousand shares shall be held to be the minimum value of said works and improvements. And, if at any time after the organization of the West Virginia Central Railway Company, and before any additional work is done upon the said part of the Covington and Ohio Railroad so transferred, the board of public works should desire an actual estimate made of the value of said part of said Covington and Ohio Railroad, and such valuation cannot be agreed upon by the board of public works and the West Virginia Central Railway Company, two disinterested engineers shall be selected for the purpose of making such valuation, one of whom shall be selected by the board of public works and one by the West Virginia Central Railway Company; which engineers, in case of disagreement, shall choose an umpire, whose valuation and determination in the premises shall be final, unless good cause be shown against their award. And in the event that the said works and improvements shall, by agreement of the board of public works and West Virginia Central Railway Company, or by the award aforesaid, be valued at a greater sum than four hundred thousand dollars, the board of public works shall subscribe such greater sum to the capital stock of said West Virginia Central Railway Company, to be paid for by the transfer herein provided for.

Right reserved to amend the charter.

"12. The legislature reserves the right to alter or amend this act, but such alteration or amendment shall not affect or impair right of the creditors of the corporation to have the property and assets thereof applied in discharge of their respective claims, or of the stockholders to have the surplus which may remain, after providing for the debts and liabilities of the corporation, distributed among themselves according to their respective interests."

CHAP. 53.—An ACT to allow Suits heretofore cognizable in Calhoun County to be brought in Kanawha County.

Passed February 24, 1865.

Be it enacted by the Legislature of West Virginia:

Authority for removal.

Any suit at law or in equity which, according to the one hundred and sixty-ninth chapter of the Code of Virginia, second edition, might be brought in Calhoun county, may hereafter be brought in Kanawha county; but nothing contained in this act, or the act to authorize suits to be brought in Ritchie county in cases theretofore cognizable in the courts of Calhoun county, passed August fifth, eighteen hundred and sixty three, shall be deemed to affect any provision of law for the limitation of suits.

CHAP. 54.—An ACT for the better Organization of State Guards.

Passed February 25, 1865.

Be it enacted by the Legislature of West Virginia:

Authority of governor.

Number of company.

1. The governor is hereby authorized to organize, arm and equip so many companies of state guards as he may deem necessary for the protection of the state against marauders. Each company shall consist of not les than twenty-five nor more than one hundred men, rank and file; and no one shall be enlisted into any company who is unable to perform efficient military duty.

Company officers

2. Each company shall have one captain, two sergeants and four corporals; and if it exceed fifty men, rank and file, one lieutenant. The officers of the said companies shall be appointed and commissioned by the governor, and shall be removed at his pleasure.

Term of enlistment.

3. The said companies shall be enlisted for the term of one year, unless sooner discharged; and the signing of the enlistment roll shall be deemed a muster into the military service of the state.

4. The state is hereby divided into three military divisions, as follows:

Military divisions of state.

First, The "Western Division" to consist of that part of the state south of the Great Kanawha river and east of New river, and to include Monroe county.

Second, The "Eastern Division" to consist of that part of the state east of the Allegheny mountains.

Third, The "Middle Division" to consist of all the state not embraced in the western and eastern divisions.

Division commanders.

5. Each of the divisions shall be under the command of a captain, to be selected by the governor out of those in commission; and such captain, while so in command, shall be entitled to the rank of major. He shall, subject to the orders of the governor, have control of all the state guards within his division. He shall, whenever in his opinion, the public safety requires it, order the state guards within his division, or so many of them as he may deem necessary, into actual service, and may relieve them therefrom whenever he may deem it proper to do so: Provided, however, that the governor may order the said state guards, or any part thereof, into actual service, and relieve them therefrom, or disband them or any part of them, whenever, in his opinion, it may be proper to do so. He may also, whenever he may deem it necessary, order the guards of the several divisions to the assistance of each other; and in such case shall designate the officer who shall command the whole.

Their authority.

Authority reserved to governor.

6. Commandants of companies shall report on the last day of each month, as follows:

Reports of company commanders.

To the adjutant general of the state, through the captain commanding the division, a full and complete report of the condition of their respective companies, giving the number of men present for duty, number sick and number absent, with authority for such absence, the amount of ammunition on hand, with a full history of the marches, battles and skirmishes in which the company has been engaged, and the number of prisoners captured during the month.

To the quartermaster general of the state, through the captain commanding the division, the kind and quantity of property captured from the enemy during the month.

Further reports.

7. The governor may require, in addition to the above, such other returns and reports from commandants of companies and divisions as he may deem proper.

Discipline.

8. The officers and men herein provided for shall be subject to the articles and regulations for the government of the armies of the United States.

Captured property.

9. Property captured from the enemy by the several companies shall be turned over by the commandants thereof to the captain commanding the division, who shall dispose of the same for the benefit of the state, in such manner as the governor may direct.

Pay, clothing and rations.

10. The non-commissioned officers and privates of said companies, for the time they are in actual service, under the orders of the governor or of the captain commanding the division, as hereinbefore provided, shall have the same pay, clothing and rations as are allowed by law to persons of the same grade and arm in the military service of the United States. The pay of the officers of the said companies shall be as follows:

Pay of officers.

A captain, while in actual service, shall receive sixty dollars per month.

A lieutenant, while in actual service, shall receive fifty dollars per month.

The captain commanding the division, for the time he shall be so in command, shall receive an additional sum of twenty dollars per month. Each of the said companies shall be mustered for pay on the last day of every second month of their service, by the officer in command thereof. The pay-roll shall be made out as near as may be in the form prescribed in the army regulations of the United States, and shall be verified by the affidavit of the mustering officer. It shall be the duty of such mustering officer to make three fair copies of each pay-roll, one of which he shall transmit to the governor, another to the captain commanding the division, and the third shall be filed and preserved by him for future reference.

Pay-roll.

How money for payment drawn.

11. For the payment of officers and men called into service under the provisions of this act, the governor shall issue his warrant once in every two months for a sufficient sum for the purpose, drawn on the treasury of the state; which shall be paid by the treasurer out of any money in the treasury not otherwise appropriated.

12. The governor may make such order for the surgical and medical attendance of the said guards as he may deem necessary.

CHAP. 55.—An ACT concerning the Collection of Taxes in certain Counties.

Passed February 25, 1865.

Be it enacted by the Legislature of West Virginia:

1. The governor, auditor and treasurer, or any two of them, are hereby authorized, by writing under their hands, to be recorded in the journal of the executive proceedings, to allow, or agree to allow to the sheriff or collector of any county, if they find it expedient and

proper to do so, a commission (in addition to that mentioned in the twenty-fourth section of the act passed December seventh, eighteen hundred and sixty-three, entitled "an act for the collection of taxes,") not to exceed ten per cent on the amount of state taxes with which such sheriff or collector is chargeable, and in addition thereto, two and a half per cent on such portion thereof as he shall punctually pay into the treasury of the state within the time required by law. Additional commission to certain sheriffs and collectors.

2. The preceding section shall not apply to the counties of Hancock, Brooke, Ohio, Marshall, Wetzel, Monongalia, Marion, Preston, Taylor, Tyler, Pleasants, Ritchie, Doddridge, Harrison, Wood and Mason. Excepted counties.

3. The provisions of the third section of the said act, requiring the sheriff or collector to give notice of the days fixed by him for receiving taxes, shall be applicable only to the counties named in the preceding section. Notice of days of receipt of taxes.

4. The act passed February twelfth, eighteen hundred and sixty-four, entitled "an act further to provide for the collection of taxes," is hereby repealed. Law repealed.

CHAP. 56.—An ACT to amend the Laws relating to Elections by the People.

Passed February 25, 1865.

Be it enacted by the Legislature of West Virginia:

1. No one shall vote at any election out of the township of which he is at the time a resident, except as hereinafter provided. No one to vote out of his township.

2. If the vote of any person offering to vote at an election shall be challenged by any voter present, the supervisor and the inspectors of the election shall refuse to allow such person to vote until he shall produce to them an affidavit as follows: Affidavit may be required of voter.

"Township of——, ——county, to wit:

"I, A. B., (name of affiant,) do solemnly swear that I have never voluntarily borne arms against the United States, the reorganized government of Virginia, or the State of West Virginia; that I have never voluntarily given aid, comfort or assistance to persons engaged in armed hostility against the United States, the reorganized government of Virginia, or the State of West Virginia; that I have not at any time sought, accepted, exercised, or attempted to exercise, any office or appointment whatever, under any authority or pretended authority, hostile or inimical to the United States, the reorganized government of Virginia, or the State of West Virginia; that I have not at any time yielded a voluntary support to any government, or pretended government, power or constitution within the United States, hostile or inimical thereto, or hostile or inimical to the reorganized government of Virginia, or the State of West Virginia: that I will support the constitution of the United States, and the constitution of the State of Form of affidavit.

West Virginia; and that I take this oath freely, without any mental reservation or purpose of evasion."

How subscribed and sworn to.

Such affidavit shall be subscribed by the party making the same, and may be sworn to before the supervisor or one of the inspectors of the election at which he offers to vote, or before any person authorized to administer oaths; and the taking of any such affidavit falsely shall be perjury, of which the party may be convicted in any court having jurisdiction of the offence. Every affidavit so taken as aforesaid, shall be delivered to the inspectors of the election and shall be by them returned to the office of the recorder of their county, whose duty it shall be to file and preserve the same in his office. But this section shall not apply to any person who has heretofore volunteered in the military service of the United States, and who has been or may hereafter be honorably discharged therefrom.

Persons excepted.

Absent voter may send ballot to clerk of supervisors.

3. Any person entitled to vote, who is necessarily absent from his township on the day of an election, in the service of the United States or of this state, may at any time within thirty days preceding the election, enclose and transmit his ballot as provided for in section twenty-six of the act passed November thirteenth, eighteen hundred and sixty-three, entitled "an act to regulate elections by the people," or he may address the same to the clerk of the board of supervisors of the county of which he is a resident, by his name or official designation. If such ballot be addressed to the clerk of the board of supervisors, and be received by him in time, it shall be his duty to transmit or deliver the same to the supervisor or one of the inspectors of the township of which the voter is a resident, if an election be held in such township; but if from any cause an election cannot be held in such township, or if there be not time to transmit the ballot to such township, he shall deliver the ballot so received by him to the supervisor or one of the inspectors of the township in which said clerk shall reside, if an election be held therein, and if not, then of any township wherein an election shall be held in said county, on or before the day of the election; and if the inspectors, or, when they differ, the supervisor and one of the inspectors be satisfied that the signature on the outside of the envelope or cover is genuine, and the person whose signature it is, would, if present in the township in which he resides, be entitled to vote therein, they shall open the envelope or cover, and if the ballot found therein be single, shall deposit the same in the box in the manner required by said section; and such ballot shall have the same effect as if deposited in the township of which such voter is a resident: Provided, that nothing herein contained shall prevent any citizen residing in an unorganized county, who shall be entitled to vote therein, from voting in any township or election precinct within said county. Any expenses incurred by the clerk of the board of supervisors under the provisions of this section, shall be audited by the board of which he is clerk, and paid by the county treasurer.

Clerk to transmit ballot to township in which it may be cast.

Duty of supervisor and inspectors.

Voter in unorganized county.

Expenses of clerk.

CHAP. 57.—An ACT creating a Board for the Examination of certain Military Claims.

Passed February 25, 1865.

Be it enacted by the Legislature of West Virginia:

Board constituted.

1. The auditor, adjutant general, and quartermaster general of the state, are constituted a board of claims, to examine, adjust and audit such claims as in the opinion of said board shall be just and proper, not otherwise provided for, accruing to the citizens of this state, growing out of military service, of the following character:

What claims to be audited.

I. Claims for services rendered by the state troops since the nineteenth day of June, eighteen hundred and sixty-one.

II. Claims for subsistence and supplies furnished the state troops when called into service.

III. Claims for necessary transportation of state troops, and for transportation of arms, supplies, &c., for their use.

IV. Claims for services rendered by officers organizing state troops under orders of the governor, and for necessary expenses incurred in publishing orders and notices, and for printing done upon the orders of such officers.

V. Claims for subsisting and equipping volunteer recruits, under the order or by the authority of the governor.

Powers of board.

2. The said board shall have the power to require the attendance of witnesses, and to examine them under oath, which oath may be administered by any member of the board; to require the production of any books and papers deemed necessary to properly adjust any claim; and to decide upon all claims, fixing the amount from the evidence they may have before them, as shall seem just and equitable.

Meetings.

3. Said board shall hold monthly meetings at the capitol building, of which due notice shall be given by publication in at least two newspapers published in this state, and shall make to the governor a report of their action at each meeting, certifying in triplicate to him all claims audited by them.

Duplicates of claims to be filed

4. Duplicates of the claims thus certified to the governor, shall be filed in the office of the secretary of the state, with a view to having the amounts paid out, refunded by the general government.

Clerk of board.

5. Said board is hereby authorized to employ a competent clerk whose duty it shall be to keep a full and correct record of all claims presented, make true abstracts thereof for the use of the board, execute all orders of the board, and receive as compensation, such sum as the board may fix, which compensation, together with the necessary expenses of the board, shall be paid in the same manner that the other claims are paid.

His duty and compensation.

Report to the legislature.

6. The governor shall transmit to the next legislature, the report of the said board, in order that provision may be made for the payment of said claims.

CHAP. 58.—An ACT concerning Delinquent Taxes levied for County purposes.

Passed February 25, 1865.

Be it enacted by the Legislature of West Virginia:

Delinquent taxes for county purposes.

1. The sheriff or other collector, after ascertaining which of the taxes levied on real estate for county purposes cannot be collected, shall annually make out and return to the board of supervisors of the county, at its stated meeting in April, an alphabetical list thereof, which list shall designate the delinquencies of each township separately, and be in the following form:

Form of list to be returned to supervisors.

"*List of real estate in the county of* ——, *delinquent for the non-payment of county taxes due thereon for the year* ——,"

Name of person.	Residence.	Estate held.	Quantity of land.	Description and location of land.	Distance & bearing from court house.	Amount of taxes.	Why returned delinquent.

Oath of sheriff.

And the sheriff or collector returning such list, shall, at the foot thereof, make and subscribe the following oath: "I, A. B., sheriff (or collector,) of the county of ——, do swear that the foregoing list is, I verily believe, correct and just, that I have used due diligence to find property within my bailiwick liable to distress for the said taxes, but have found none."

Copy of list to be posted.

2. The sheriff or collector shall post a copy of said list at the front door of the court house of his county on a court day, or during the sitting of the board of supervisors next preceding or during the term or sitting at which the list may be presented to the board of supervisors.

Copy of list, when correct to be certified to recorder.

Taxes thereafter to be paid to recorder.

3. The said list shall be presented to the board of supervisors of the county, and examined by said board. The board having become satisfied of the correctness of said list, or having corrected the same if erroneous, shall direct its clerk to certify a copy thereof to the recorder. The original list shall be preserved by the clerk in his office. After the said copy is so certified, the sheriff or collector shall not receive any of the taxes mentioned therein, but said taxes with interest thereon at the rate of fifteen per centum per annum from the fifteenth day of December, in the year in which the same were levied, may be paid to the recorder of the county, who shall deliver to the person paying said taxes, a certificate of payment, for which he shall

pay to the recorder a fee of fifty cents; and the recorder shall pay the said taxes and interest to the treasurer of his county, at the times and in the manner he is required to pay taxes on deeds and the seal of his office, prescribed by the sixth section of the one hundred and seventh chapter of the acts of one thousand eight hundred and sixty-three. For a failure to pay over to the treasurer as aforesaid, the recorder shall be liable to the forfeiture mentioned in the seventh section of the said chapter.

Duty and fees of recorder.

4. If any officer shall return in such list, real estate as delinquent for the non-payment of taxes, when such taxes or any part thereof shall have been actually received by him, he shall forfeit, if the return was by design, ten times the amount of the taxes actually received, and if the return was by mistake, twice the amount. One-half of such forfeiture shall, in each case, be to the county, and the other half to the person charged with such taxes. And any such officer who shall return in such list any real estate as delinquent, when he had either found or might have found sufficient property within his bailiwick liable to distress for the taxes for which such real estate was returned delinquent, shall forfeit to the county a sum equal to five times the amount of the said taxes.

Penalty for false return.

Penalty for failure to distrain when possible.

5. The recorder shall enter in a well bound book, properly indexed, in suitable columns, the name of the owner of each tract, his residence if known, the estate held, the number of acres, the description and location thereof, the distance and bearing from the court house, the amount of taxes due thereon, the year for which the same were levied, and in a separate column he shall enter the amount paid to him for the redemption of each tract which may be redeemed, and the date of such redemption.

Further duties of recorder.

6. Such taxes, so entered, shall constitute a lien upon the lands chargeable therewith from the date of the levy thereof; and interest shall be computed thereon at the rate of fifteen per cent per annum from the fifteenth day of December in the year in which the taxes were levied until payment. The lien aforesaid shall have priority over all other liens, except the lien for taxes due the state, and shall be valid, although the delinquent taxes due the state shall have been paid to the auditor.

Such taxes to constitute a lien.

7. Whenever the title to any land so returned delinquent for the non-payment of county taxes, shall pass to another other than the state, by deed, devise, gift or descent, the person to whom the same shall pass, shall pay all liens thereon for taxes for county purposes, with interest as aforesaid, to the date of such payment; and if such lien be not discharged, the supervisors of the county, in their corporate name, may enforce such lien in the circuit court of their county against the person having title to such land.

Lien to be enforced against purchaser or heir.

8. Whenever there shall be a sale, in whole or in part, of a tract of land for delinquent taxes due the state, all delinquent taxes due the county on such tract, shall be paid to the recorder of the county; and

Purchaser at sale for state taxes to pay county taxes.

any purchaser, other than the state, shall produce to the court the certificate of the recorder that all liens for delinquent county taxes prior to such application are paid, before the court shall order the plat and certificate of such lands to be recorded.

Redemption of land by payment to purchaser.

9. The owner of any real estate sold for delinquent taxes due the state, upon which there are delinquent taxes due the county, his heirs or assigns, or any person having a right to charge such real estate with debt, may redeem the real estate from the lien of the delinquent taxes thereon due the county, by paying to the purchaser, his heirs or assigns, within two years from the sale thereof, the amount said purchaser, his heirs or assigns may have paid to the recorder, in discharge of any lien for county taxes, with interest thereon at the rate of ten per cent per annum, from the time that the same may have been so paid.

By payment to recorder.

10. What is authorized to be paid by the preceding section, may be paid within the said two years, to the recorder of the county whose officer may have sold such real estate, in any case in which the purchaser, his heirs or assigns may refuse to receive the same, or may not reside or cannot be found in the county.

Same subject.

11. In all cases in which the former owner, his heirs or assigns, or any person having the right to charge such real estate with a debt, under and by virtue of the twenty-second and twenty-seventh sections of chapter thirty-seven of the code of Virginia, may redeem such real estate for delinquent taxes due the state, such owner, his heirs or assigns, or any person having the right under the twenty-seventh section of said chapter to charge said real estate with a debt, may redeem said real estate from the delinquent county taxes, by the payment thereof to the recorder of the county in which the same is situated, with ten per cent interest thereon from the fifteenth day of December in the year in which the same accrued, till payment.

CHAP. 59.—An ACT to amend the General Free School Law.

Passed February 25, 1865.

Be it enacted by the Legislature of West Virginia:

1. The seventh, seventeenth, twenty-first, twenty-fifth, thirty-first, thirty-seventh, thirty-ninth, forty-second and forty-fourth sections of "an act providing for the establishment of a system of free schools," passed December tenth, eighteen hundred and sixty-three, shall be amended and re-enacted so as to read as follows:

Powers and duties of board of education.

"7. The board of education shall take the control and management of free schools within their district, in pursuance of which they shall be charged with the following powers and duties:

Establishment of schools.

"First, they shall establish a sufficient number of free schools for the education and instruction of every individual resident within their district, between the ages of six and twenty-one years, and all persons resident within the same, who have been honorably discharged from the military or naval service of the United States or of this state, who may apply for admission and instruction in person, or by parent, guardian or next friend, and such person so discharged, shall be entitled to attend such school for the term of five years. Second, they shall cause suitable lots of ground to be procured, and suitable buildings to be erected, purchased or rented for school houses, and shall supply them with the proper fuel, and with such furniture and fixtures as are necessary to the comfort, health, good order and progress of the pupils. Third, they shall have the appointment of all the teachers of the public schools within their district, shall fix the amount of teachers' salaries, and may dismiss them at any time for incompetency, cruelty, negligence or immorality. Fourth, they shall direct what branches of learning, in addition to those prescribed in the sixth section of this act, shall be taught in each school, and may suspend or expel from any school any pupil found guilty, on full examination and hearing, of refractory or incorrigibly bad conduct. Fifth, they shall visit all the schools of their district once within two weeks after the opening, and again within two weeks preceding the close of each school, and at such other periods during the term, as in their opinion the exigencies of each school may require; at which visits they shall examine the register of the teacher, and see that it is properly kept, and other matters touching the school house, furniture, fixtures, libraries, studies, discipline, mode of teaching and improvement of the school; shall confer with the teacher in regard to its condition and management, and make such suggestions as in their view would promote the interest and efficiency of the school, and the progress and good order of the pupils. The results of such visitation they shall cause to be entered on their minutes. Sixth, they shall pay all necessary expenses of the schools by drafts upon the township treasurer, or other proper disbursing officer of the funds raised within each district for school purposes, which drafts shall be signed by the clerk of the township as secretary of the board, and an account of the same shall be entered by him in a book to be kept for the purpose. Seventh, they shall annually, on or before the first day of September in each year, make a report to the county superintendent, setting forth the number of schools within their districts; the number and condition of their school houses; the number of scholars in attendance during the year, distinguishing between males and females; the average of daily attendance; the length of time the schools have been kept open during the year; the amount of tax levied and collected for school purposes within their district during the year; the number of teachers employed, distinguishing between male and female; the averages of each per month, including board; the amount expended for building, repairing and furnishing school houses; the amount and value of apparatus and libraries belonging to their district for the use of schools; and such other information as may be necessary and beneficial, in order to form a just estimate of the operation of the school system. Eighth, it shall be the duty of the board of education to make settlement with the township treasurer, at their regular ses-

Education of discharged soldiers.

School houses.

School teachers.

Branches taught

Expulsion of pupils.

Visits to schools.

Payment of expenses of schools.

Report to county superintendent.

Settlements with township treasurer.

sion in April annually; but if from want of time or for other reason a settlement cannot be made in that month, then it shall be the duty of the board to appoint a committee, composed of one or more of their members, to make such settlement as soon as practicable; and the result shall be reported to the clerk, and an abstract recorded in the records of the board.

Schools for colored children.

"17. The township boards of education, in their respective townships, shall be and they are hereby authorized and required to establish within their respective jurisdictions, one or more separate schools for colored children, when the whole number by enumeration exceeds thirty, so as to afford them, as far as practicable, under all the circumstances, the advantages and privileges of a free school education; and all such schools so established, shall be under the management and control of the board of education; but in case the average attendance of colored children shall be less than fifteen for any one month, it shall be the duty of said board or other school officers, to discontinue said school or schools for any period not exceeding six months at any one time, and if the number of colored children shall be less than fifteen in attendance, or not exceeding thirty by enumeration, the directors shall reserve the money raised on the number of colored children, and the money so reserved shall be appropriated for the education of colored children, in such way as the township board shall think best.

Visits of county superintendent to schools.

"21. It shall be the duty of the county superintendent to visit all the schools within his county, and to note the course and method of instruction, and the branches taught, and to give such directions in the art of teaching and the method thereof in each school, as to him shall seem necessary and expedient, so that uniformity in the course of studies and methods of instruction employed, shall be secured as far as practicable in the schools of the several grades respectively. He shall acquaint himself, so far as practicable, with the character and condition of each school, noting any deficiencies that may exist, either in the government of the school, the classification of its pupils, or the method of instruction employed in the several branches, and shall make such suggestions in private to the teachers as to him shall appear necessary to the good order of the school, and progress of the pupils. He shall note the character and condition of the school houses, the sufficiency or insufficiency of their furniture and fixtures; and shall make such suggestions to the several township boards of education as in his opinion shall seem conducive to the comfort and progress of the pupils of the several schools.

Compensation of county superintendent and commissioners.

"25. It shall be the duty of the board of supervisors, to make such allowance out of the school fund, in payment for their services, to each county superintendent, not less than one hundred nor more than five hundred dollars, and to each school commissioner not more than one dollar per diem, while on duty, as justice and right may require.

Reports of state superintendent.

"31. He shall annually, on or before the fifteenth day of March, report to the auditor the number of persons between the ages of six and twenty-one years, in each county in the state, also all township boards which have failed to make the enumeration required in the sixth section of this act, and shall, at each session of the legislature, make a report to the same in regard to the condition of free schools within the state, embracing all statistics compiled from the reports of the county superintendents, which will be necessary to give a proper exhibition of the workings of the system, together with such plans as he may have matured for the management and improvement of the free school fund, and for the better and more perfect organization and efficiency of free schools, and likewise all such matters in relation to his office and to the free schools, as he may deem it expedient to communicate.

Distribution of proceeds of fines and taxes.

"37. There shall likewise be distributed, according to the second section of the tenth article of the constitution, and in the manner herein provided, the net proceeds of all fines, confiscations and forfeitures accruing to this state under the laws thereof, together with the proceeds of a capitation tax of one dollar on each white and colored male inhabitant over twenty-one years of age, and such sum as may be produced by a tax of ten cents upon the hundred dollars valuation of all taxable property of the state, at the last annual assessment; which tax shall be assessed and collected at the same time and in the same manner as other state taxes are assessed and collected. And the officer collecting such tax, shall be allowed a commission thereon at the same rate per cent as may be allowed by law for the collection of other state taxes; which taxes, when so collected, shall be paid into the treasury of the state, to be distributed annually with other school funds herein described, to the several counties of the state in proportion to their enumeration of scholars.

Commission of collector.

Increase of township levies authorized.

"39. It shall be the duty of the board of education of each township of the state, to submit to a meeting of the qualified voters of their township, at the regular annual township meeting, an estimate, as near as practicable, of the amount of money necessary for the purpose of prolonging the schools in the districts after the state funds have been exhausted, so that free schools shall be continued in every district for the term of six months at least, in every year; and said meeting shall have authority to assess the amount of tax to be levied for such purpose, not exceeding twenty-five cents upon the hundred dollars valuation as aforesaid. The minutes of the meeting shall be recorded and preserved in the record-book of the township board of education. And the rate per cent so decided upon, the board shall make known by certificate in writing within ten days, including any tax which may have been voted by a special meeting for the establishment of high schools, as provided in the tenth section, to the assessor, who shall levy the entire amount of such assessment on all the taxable property of the township, and make a return thereof to the county superintendent; and such taxes so levied for school purposes, shall be collected as the state taxes are collected. And the officer collecting the same, shall be allowed a commission thereon at the same rate per cent as may be allowed for the collection of said state taxes; and he shall make payment of said moneys to the treasurer of the township, as other school funds are paid.

Commission of collector.

"42. The township treasurer shall annually, between the fifteenth

Time of treasurer's settlement changed.

day of August and the first day of September, settle with the county superintendent, and account to him for all moneys received, from whom, and on what account, and the amount paid out for school purposes in his township. The county superintendent shall examine the vouchers for such payments, and if satisfied with the correctness thereof, shall certify the same, which certificate shall be a discharge of such treasurer; and at the expiration of his term of service, said treasurer shall deliver over to his successor in office all books and papers, with all money or other property in his hands belonging to said township or to schools therein; and also all orders he may have redeemed since his last annual settlement with the county superintendent, and take receipt therefor, which he shall deposit with the township clerk within ten days thereafter.

Delivery of books and papers to successor.

Increase of district tax authorized.

"44. It shall be the duty of the several township boards of education, as soon as practicable after their township has been sub-divided, as provided in the sixth section of this act, to provide school houses in such locations as will best accommodate the majority of the inhabitants of such sub-divisions, and to furnish them with such furniture and other appendages as are necessary to the comfort, health and progress of the pupils; and for this purpose they are hereby empowered to levy a tax not exceeding twenty cents on the hundred dollars, on taxable property of the district, which tax shall be assessed by the township clerk upon the basis of the last valuation for state purposes; and a duplicate of such assessment shall be delivered to such collector as may be appointed by the board, and when collected, shall be paid over to such treasurer as the board, under proper regulations, looking to the security of the fund, may appoint; and the amounts so collected and paid over, together with all gifts, grants, donations and devises, which may be made for such purpose, shall constitute a building fund, to be exclusively appropriated to the purchase of sites for school houses, the construction and furnishing of the same, or for the rent, hire or repair of such property for the use of the free schools of the district."

Building fund.

Text books.

2. The state superintendent of free schools may prescribe a series of class books to be used in the free schools throughout the state.

CHAP. 60.—An ACT in relation to Township Meetings and Elections.

Passed February 25, 1865.

Be it enacted by the Legislature of West Virginia:

Number necessary for township meeting.

Any township meeting specified in section four of the act passed September twenty-fifth, eighteen hundred and sixty-three, entitled "an act providing for and regulating township meetings and elections," may be hereafter held in townships entitled to elect one justice where ten voters are present, and in townships entitled to elect two justices where fifteen voters are present.

CHAP. 61.—An ACT more effectually to prevent the Sale or Use of Intoxicating Liquor contrary to Law.

Passed February 27, 1865.

Be it enacted by the Legislature of West Virginia:

Section ten of chapter two hundred and one of the code of Virginia, second edition, is hereby amended and re-enacted to read as follows:

Justice to summon person suspected of selling liquor contrary to law.

"10. If any justice suspect any person of selling, by retail, wine or ardent spirits, or a mixture thereof, contrary to law; or of selling or offering or exposing for sale, any intoxicating liquor, or keeping open any distillery, bar, office, stall or room in his possession or under his control, at which such liquor had theretofore usually been sold, or permitting any person to drink any intoxicating liquor at the same, on the day of an election and within two miles of the place of such election, or during the night succeeding such day, contrary to the sixty-fourth section of the act passed November thirteenth, eighteen hundred and sixty-three, entitled "an act to regulate elections by the people," such justice shall summon the person suspected of such offense, and such witnesses as he may think proper, to appear before him; and upon the person so suspected appearing or failing to appear, if the justice, on examining the witnesses under oath, find sufficient cause, he shall direct the prosecuting attorney for the county to institute a prosecution against the person so suspected, and shall recognize the material witnesses, or cause them to be summoned to appear at the next term of the circuit court of the county. Such justice may also require the person suspected to enter into recognizance to keep the peace and be of good behavior for a time not exceeding one year. If such recognizance be given by the person so suspected, the condition thereof shall be deemed to be broken if during the time for which it is given such person shall sell, by retail, wine or ardent spirits, or a mixture thereof, contrary to law, or violate, in any particular, the sixty-fourth section of the above mentioned act to regulate elections by the people.

Prosecution of such person.

Recognizance.

How broken.

CHAP. 62.—An ACT for the relief of certain Militia of Upshur County.

Passed February 27, 1865.

Preamble.

Whereas, certain militia of Upshur county, in the year eighteen hundred and sixty-three, while in discharge of their duty in the service of the state, were captured by armed rebels, taken to Richmond and there imprisoned, and many of them have died during such imprisonment; therefore,

Be it enacted by the Legislature of West Virginia:

Appropriation.

1. There is hereby appropriated, out of the treasury of the state, a sum of money sufficient to pay to each of the said militia, if living, or his personal representative, if he be dead, thirteen dollars per month during his imprisonment as aforesaid, or if he died during such imprisonment, then at that rate per month from the time of his capture until his death.

How to be drawn

2. The money so appropriated shall be drawn only on the requisition of the governor, certifying that satisfactory evidence has been produced to him showing that the person in whose favor, or in favor of whose personal representative such requisition is made, was captured, as aforesaid, while in discharge of his duty in the service of the state.

CHAP. 63.—An ACT to amend and re-enact the First Section of the Act entitled "An Act to prescribe the manner in which Money may be paid into the Treasury of the State," passed July 16, 1863.

Passed February 27, 1865.

Be it enacted by the Legislature of West Virginia:

The first section of the act entitled "an act to prescribe the manner in which money may be paid into the treasury of the state," passed July sixteenth, eighteen hundred and sixty-three, is amended and re-enacted so as to read as follows:

Into what banks money due the state may be paid.

"1. All money to be paid into the treasury of this state shall be paid into the Merchants' and Mechanics' Bank of Wheeling, at the city of Wheeling, or one of its branches at Point Pleasant, Clarksburg or Morgantown; or into the Northwestern Bank of Virginia, at Wheeling, or at one of its branches at Parkersburg or Wellsburg; or into the Exchange Bank of Virginia, at Weston; or into the Fairmont Bank, at Fairmont; or into any bank within this state that now is, or may hereafter be, organized and authorized by the comptroller of the currency to commence the business of banking under the act of the congress of the United States, approved June third, eighteen hundred and sixty-four, entitled "an act to provide a national currency, secured by a pledge of United States bonds, and to provide for the circulation and redemption thereof," to the credit of "the treasury of West Virginia," and the person so paying the same shall take from the proper officer of such bank or branch, or banking association, a certificate of the fact. The treasurer, on the delivery to him of such certificate, shall retain and file the same, charging the amount therein specified to the proper bank or branch, or banking association, and delivering to the person who made the payment at the bank, duplicate receipts for the amount so paid, specifying on what account the same was paid. The person making the payment shall forthwith hand over one of the said receipts to the auditor, who shall retain and file the same, charging the amount to the treasurer's account and endorse on the other receipt, which is to be retained by the person making the payment, as follows: 'A duplicate hereof has been filed in the auditor's office,' and affix his signature and the proper date to such endorsement. And no receipt of the treasurer shall be an acquittance or discharge to any person for any sum of money due this state, unless endorsed by the auditor as aforesaid; and any person liable to pay money into the treasury, who shall pay the same otherwise than according to this act, shall remain liable for such money and be subject to the same fine, penalty, forfeiture or damages to which he would have been subject if he had not paid the same."

Duty of treasurer.

Duty of auditor.

Payment otherwise made invalid.

CHAP. 64.—An ACT further to provide for the discharge of the Duties of the Governor in certain Cases.

Passed February 27, 1865.

Be it enacted by the Legislature of West Virginia:

In case of the removal of the governor from office, or of his death, failure to qualify within the time prescribed by law, resignation, removal from the seat of government, or inability to discharge the duties of the office, the said office, with its compensation, duties and authority, shall devolve upon the president of the senate; and in case of his inability or failure from any cause to act, on the speaker of the house of delegates; and in case of his inability or failure from any cause to act, on the secretary of the state; and in case of his inability or failure from any cause to act, on the attorney general. Officers to act as governor, designated.

CHAP. 65.—An ACT to amend the Charter of Elizabethtown, in the county of Marshall.

Passed February 28, 1865.

Be it enacted by the Legislature of West Virginia:

The charter of Elizabethtown, in the county of Marshall, is hereby amended so as to reduce the number of councilmen now required to be elected by the charter, from twelve members to the number of five. Number of councilmen reduced.

CHAP. 66.—An ACT authorizing the Governor to purchase Breech-loading Rifles for the use of State Guards.

Passed February 28, 1865.

Be it enacted by the Legislature of West Virginia:

1. The sum of three thousand dollars is hereby appropriated for the purchase of breech-loading rifles, to be placed in the hands of state guards for the defence of the state. Appropriation.

2. To carry out the provisions of the preceding section, the governor is authorized to issue his warrant, drawn upon the treasury of this state, for the sum hereby appropriated, and to be paid by the treasurer out of any money in the treasury not otherwise appropriated; which money shall be expended by the governor in the purchase of breech-loading rifles, which shall be distributed by him among the several companies of state guards, as, in his discretion, he may deem proper. How to be drawn and expended.

CHAP. 67.—An ACT to make provision for the purchase of Iron Bedsteads for that part of the Jail of Ohio County now used as a Penitentiary.

Passed February 28, 1865.

Be it enacted by the Legislature of West Virginia:

The sum of five hundred dollars is appropriated out of any money in the treasury, not otherwise appropriated, for the purpose of supplying iron bedsteads in the cells, to each convict now confined in the jail of Ohio county. Said money shall be expended under the direction of the governor. Appropriation.

CHAP. 68.—An ACT increasing the Allowances for the Guard to the Jail of Ohio County.

Passed February 28, 1865.

Be it enacted by the Legislature of West Virginia:

Pay of guards limited.

1. The board of supervisors of Ohio county are authorized, whenever, in their opinion, it is necessary for the safe keeping of the state convicts confined in the jail of said county, to employ two efficient guards for the said jail, at a sum not exceeding two dollars per day each, the accounts for which shall be certified quarterly by the keeper of said jail to the governor, and, if approved by him, shall be paid from the state treasury.

Appropriation.

2. The sum of one thousand dollars is hereby appropriated out of any money in the treasury not otherwise appropriated, for the payment of said guards.

CHAP. 69.—An ACT defining the Terms on which Foreign Corporations may hold Real and Personal Estate in this State.

Passed February 28, 1865.

Be it enacted by the Legislature of West Virginia:

Authority granted.

1. Any corporation duly chartered by the laws of any one of the United States or territories thereof, for the purpose of mining for petroleum or rock oil, for coal oil, for coal, iron or other minerals in said state or territory, may hold real and personal estate in this state, if its charter authorize it to do so, upon the same terms, in like quantity and on the same condition imposed upon corporations created by the laws of this state.

Corporation to file copy of law under which it is formed.

And copy of charter.

2. Every such corporation desiring to hold real estate within this state, shall file in the office of the secretary of the state a duly certified copy of the law under which it is formed, which shall be preserved by the secretary. It shall cause to be recorded in the office of the secretary of the state, and in the office of the recorder of the county in which its real estate, or the greater portion thereof, is situated, whenever such county is organized, a duly certified copy of its charter, to be recorded by the secretary in the books in which certificates of incorporation issued under the laws of this state are recorded.

Appointment of attorney.

3. Every such foreign corporation shall by power of attorney, duly executed by it, appoint some person residing in this state its attorney, with authority to accept service of all lawful processes and notices against such corporation in this state, and if he refuse so to accept such process or notice, service may be made on such attorney, and such service shall be equivalent to service on his principal.

Power of attorney to be filed.

4. Such power of attorn all be filed in the office of the secretary of the state, and if such attorney dies or removes from this state, the said corporation shall appoint another attorney with like powers.

5. Every such foreign corporation which shall, after the first of July, eighteen hundred and sixty-five, operate in this State without such appointment of an attorney, or shall have failed to comply with the second section of this act, shall forfeit and pay not less than one hundred and not over three hundred dollars, to be recovered as other fines, and when so recovered, to be applied to the use of free schools.

Penalty for violation of this act.

6. Every such power of attorney in this act mentioned, shall be recorded by the secretary of the state in the manner provided by the fifteenth section of the said act of the legislature of this State.

Record of power of attorney.

7. The said foreign corporations shall be subject to the sixty-third section of the said act.

Usury.

8. For any recording which may be done pursuant to this act, the secretary of the state and recorder may charge at the rate of ten cents per hundred words.

Fee for recording

CHAP. 70.—An ACT making an Appropriation for the Soldiers' National Cemetery at Gettysburg, Pennsylvania.

Passed February 28, 1865.

Be it enacted by the Legislature of West Virginia:

1. The sum of twenty-five hundred and twenty-three dollars and eighteen cents is hereby appropriated to aid in the erection of a monument and the permanent enclosure and adornment of the grounds of the Soldiers' National Cemetery at Gettysburg, Pennsylvania.

Appropriation.

2. The amount hereby appropriated shall be subject to the order of the governor, and the whole or any part thereof may be paid by him, if required for the purposes named in the first section of this act, to the treasurer of the Soldiers' National Association at Gettysburg, Pennsylvania.

How drawn.

CHAP. 71.—An ACT to relinquish to the Elk River Bridge Company the Stock in said Company belonging to the State.

Passed February 28, 1865.

Be it enacted by the Legislature of West Virginia:

The interest or stock of this State in the Elk River Bridge Company is hereby relinquished to the said bridge company for the benefit of the stockholders thereof other than the state; provided, that this act shall be of no effect until the said bridge company shall cause to be erected across the said river a bridge suitable for passengers and wagons: Provided, however, that if the state, by her legislature, shall at any time within one year from the passage of this act, or at any time before the said bridge company shall have completed a bridge upon the piers and abutments owned by them, appropriate on the part of the state an amount toward the erection of the said bridge, proportionate

Stock relinquished when bridge built.

If appropriation made by state, stock to revert.

Reservation of claim against United States.

to her interest in the same, then the interest so relinquished shall revert to and become the property of the state as though this act had not been passed: Provided, further, that the state does not by this act relinquish her interest in any claim that she may have in common with the other stockholders in the bridge company against the government of the United States for the bridge destroyed by the army on the thirteenth day of September, eighteen hundred and sixty-two.

CHAP. 72.—An ACT to authorize the Council of the City of Wheeling to collect a Tax on Personal Property in said city.

Passed February 28, 1865.

Be it enacted by the Legislature of West Virginia:

Limit of taxation.

1. The council of the city of Wheeling shall have authority, under such regulations as they may prescribe by ordinance, to assess, levy and collect an annual tax for the use of the city, on personal property in the city, not to exceed, in any year, fifty cents on every hundred dollars of the assessed valuation thereof; and the words "personal property" shall be deemed to include all subjects of taxation which the assessors acting under the laws of the state are or shall be by law required to enter on their personal property books for the purpose of state taxation.

Law repealed.

2. The third section of the act of the general assembly of Virginia, passed March ninth, eighteen hundred and thirty-eight, entitled "an act to amend the act entitled 'an act to incorporate the city of Wheeling, in Ohio county,' " is hereby repealed.

CHAP. 73.—An ACT to empower certain Railroad Companies to purchase and hold Real Estate in the City of Parkersburg and Wood County.

Passed February 28, 1865.

Be it enacted by the Legislature of West Virginia:

Real estate in Parkersburg.

In Wood county.

The Baltimore and Ohio Railroad Company, the North-western Virginia Railroad Company, and the Marietta and Cincinnati Railroad Company, or any of them, or any railroad company connecting with any of the above named companies, or which may become the purchaser or purchasers of the North-western Virginia Railroad, are empowered to purchase and hold the following real estate in the city of Parkersburg, viz: Lots numbered thirty-two, thirty-three, thirty-four, thirty-five, thirty-six, thirty-seven, thirty-eight and thirty-nine, on the plat of said city, being in quantity two and two-thirds acres of ground, bounded by Washington, Greene, Littleton and Avery streets, being the same formerly held by the North-western Virginia Railroad Company, known as the Central Depot, together with such other real estate in said city and in Wood county, not exceeding twenty acres in addition to the lands which such companies now have the right to acquire by law, as may be necessary for depot buildings, machine shops and other purposes appertaining to the business of railroad companies.

CHAP. 74.—An ACT in relation to the Time of holding the Terms of the Circuit Court in the First Judical Circuit.

Passed February 28, 1865.

Be it enacted by the Legislature of West Virginia:

Change of terms in Brooke.

1. The commencement of the terms of the circuit court in the county of Brooke, of the first judicial circuit, from and after the passage of this act, instead of being as heretofore prescribed by law, shall be as follows: On the second Tuesday of March, fourth Tuesday of June, September and November.

Rules.

2. Hereafter rules shall be held in the clerk's office of said court on the first Tuesday of every month.

Juries.

3. The judge of said circuit may dispense with the summoning of grand jurors and the issuing of writs of *venire facias*, under the eighth section of the act passed November fourth, eighteen hundred and sixty-three, entitled "an act in relation to juries," at either one of the terms of the courts in the several counties of the first circuit.

CHAP. 75.—An ACT appropriating the Public Revenue for the Fiscal Year 1865.

Passed February 28, 1865.

Be it enacted by the Legislature of West Virginia:

General fund.

All payments made by the treasurer of this state, in excess of appropriations authorized by law, to the first day of January, eighteen hundred and sixty-five, upon warrants legally issued by the auditor, are hereby legalized; and the surplus of all appropriations made prior to the first day of January, eighteen hundred and sixty-five, and all money in the treasury not appropriated prior to the first day of January, eighteen hundred and sixty-five, as well as all money that may have come or that may come into the treasury from the first day of January, eighteen hundred and sixty-five, to the first day of January, eighteen hundred and sixty-six, shall constitute a general fund and be appropriated as follows:

Appropriated.

Legislature.

For expenses of the legislature for the session commencing on the seventeenth day of January, eighteen hundred and sixty-five, including pay of officers, printing and stationery, seventeen thousand dollars.

Rent of Linsley Institute.

For rent of the Linsley Institute from the first day of January, eighteen hundred and sixty-five to the first day of January, eighteen hundred and sixty-six, furniture, and repairs to the same and the premises, fifteen hundred dollars.

Judges.

For salaries of the judges of the supreme court of appeals and of the circuit courts, thirty thousand dollars.

Clerk of supreme court.

For salary of the clerk of the supreme court of appeals, one thousand dollars.

Reporter.

For salary of the reporter of the supreme court of appeals, nine hundred dollars.

Expenses of courts.

For contingent expenses of courts, three thousand dollars.

Criminal charges.

For criminal charges, including convicts in jails and their removal, witnesses', jurors' and jailors' fees, twenty thousand dollars.

Hospital for insane.

For the West Virginia Hospital for the Insane, fourteen thousand dollars.

Lunatics.

For expenses of lunatics confined in jails, two thousand dollars.

Salaries of executive officers.

For salary of the governor, two thousand dollars; auditor, one thousand five hundred dollars; treasurer, one thousand four hundred dollars; secretary of the state, one thousand three hundred dollars, and attorney general, one thousand dollars.

For salary of adjutant general, fifteen hundred dollars.

For salary of the quartermaster general, thirteen hundred dollars.

For the governor for rent of the executive mansion, seven hundred and fifty dollars.

Contingent expenses of executive offices.

For contingent expenses of the auditor's office, including stationery, books, printing, postage and fuel, two thousand dollars.

For contingent expenses of the office of the secretary of the state, including necessary clerk hire, thirteen hundred dollars.

For contingent expenses of the treasurer's office, one hundred and twenty-five dollars.

For contingent expenses of the adjutant general's office, including all arrears, seven hundred and fifty dollars.

For contingent expenses of the quartermaster general's office, including all arrears, two thousand five hundred dollars.

Public printing.

For public printing, six thousand dollars.

Salaries of clerks

For salary of the clerk in the adjutant general's office, eight hundred dollars.

For salary of clerks in auditor's office, one thousand dollars.

For salary of clerk in treasurer's office, four hundred dollars.

Vaccine agent.

For salary of vaccine agent, one hundred dollars.

Printing report on Code.

For printing two hundred copies of the report of Daniel Lamb, by virtue of his contract with the joint committee of the legislature for revising, collating and digesting the "code of West Virginia," three thousand dollars.

Janitor.

For janitor and guard of executive offices, five hundred dollars.

Civil contingent fund.

On account of the civil contingent fund, seven thousand five hundred dollars.

Militia claims.

For militia claims allowed by regimental courts under act of March third, eighteen hundred and sixty-four, six thousand dollars.

William Ewing.

To William Ewing for printing blanks for the adjutant general of Virginia, twenty-three dollars.

Benj. Rollins.

To Benjamin Rollins, late jailor of Jackson county, one hundred and fifty-one dollars.

Commissioner of immigration.

And to the commissioner of immigration for expenses of printing and circulating documents, three hundred dollars.

CHAP. 76.—An ACT to Regulate the Salaries of the Quarter Master General and Adjutant General of this State.

Passed February 28, 1865.

Be it enacted by the Legislature of West Virginia:

Salary of quartermaster general fixed.

1. So much of the fourth section of chapter twenty-one of the acts of eighteen hundred and sixty-three, entitled "an act for the appointment of a quartermaster general, and prescribing in part his duties," as relates to the salary of quartermaster general, and when the same is payable, is hereby amended and re-enacted so as to read as follows: "And said quartermaster general shall receive for his services the sum of thirteen hundred dollars per annum, payable quarterly as other salaries are paid." And so much of the first section of chapter eighty of the acts aforesaid entitled "an act fixing the compensation of certain officers and clerks," as relates to the salary of the adjutant general, is hereby amended and re-enacted so as to read as follows: "The adjutant general shall be paid the annual salary of fifteen hundred dollars."

Salary of adjutant general fixed.

Commencement.

2. This act shall be in force from the fourth day of March, eighteen hundred and sixty-five.

CHAP. 77.—An ACT Prescribing how Taxes on Lands in certain counties may be paid into the Treasury.

Passed February 28, 1865.

Be it enacted by the Legislature of West Virginia:

In cases where collector cannot be employed.

1. In counties where collectors of the public revenue cannot be employed, any person may pay into the treasury the taxes on his land in the same manner as is provided for payment by non-residents of a county in the third section of chapter thirty-six of the Code of Virginia, second edition.

Duty of auditor in such cases.

2. Where there has been no collector in any such county since the year eighteen hundred and sixty, or for any one or more years since, upon payment of the taxes for any such year, the auditor shall give a certificate of the payment so made, and shall transmit a list of the taxes so paid to the sheriff or collector of such county when appointed or elected.

CHAP. 78.—An ACT to Facilitate the Organization of National Banking Associations.

Passed February 28, 1865.

Be it enacted by the Legislature of West Virginia:

Exchange Bank of Va., may subscribe to national bank.

1. The Exchange Bank of Virginia, at Weston, may subscribe for not exceeding fifty thousand dollars of the capital stock of any national banking association which may be organized in Lewis county.

How directors of bank may take stock in national bank.

2. The directors of any other bank or branch in this state, if authorized by written consent of the stockholders owning two-thirds of the stock, (and in making up the said two-thirds, the stock standing in the name of the state, the literary fund, and internal improvement fund, shall be counted as consenting thereto,) may subscribe for and take stock, to such extent as they may deem expedient and proper in any national banking association which may be organized within the county in which such bank or branch is located.

CHAP. 79.—An ACT to prevent the Prosecution of Suits and the suing out of Process by persons engaged in Rebellion.

Passed February 28, 1865.

Be it enacted by the Legislature of West Virginia:

Oath of defendant that plaintiff has aided rebellion.

1. If the defendant, or one of the defendants, his agent or attorney, in any action or suit now pending, or which may hereafter be brought in any court, or before any justice, make oath that he has good cause to believe, and does believe, that the person for whose use or benefit the action or suit is prosecuted, is aiding or abetting, or has theretofore at any time, aided or abetted the so-called Confederate States of America, or the rebel state government at Richmond, in any hostile action against the United States or this state, the court or justice, if such defendant so require, shall make an order directing the attorney for the plaintiff (or if there be more than one attorney for the plaintiff, such one or more of them as to the court or justice may seem proper,) to disclose upon oath, within such reasonable time to be designated in the said order, as the court or justice may appoint, for whose use or benefit the said action or suit is prosecuted, and shall dismiss the said action or suit, if such order be not complied with, unless good cause be shown why it was not. And the court or justice shall further make an order, if the said defendant so require, dismissing the action or suit, unless the person for whose use or benefit the same is prosecuted, within such reasonable time (not less than thirty days,) to be designated in such order, as the court or justice may appoint, take the affidavits prescribed by the act passed February eleventh, eighteen hundred and sixty-five, entitled "an act to amend and re-enact sections twenty-three, twenty-seven and twenty-eight of chapter one hundred and fifty-one, and section thirteen of chapter one hundred and seventy of the Code of Virginia," and file the same in the papers of the cause. But if the action or suit be prosecuted for the use or benefit of a corporation, married woman, infant, insane person, personal representative of a deceased person, or commissioner of an enemy of the state, no order dismissing the same shall be made; and if it be brought for the use and benefit of a resident of another state, or a territory of the United States, or of the District of Columbia, that part of the said oath requiring the person who takes it to support the constitution of this state, shall be omitted. The affidavit of such party, or of any attorney for the plaintiff, shall be received

Disclosure required of plaintiff's attorney.

Affidavit required of plaintiff.

Persons excepted from act.

as *prima facie* evidence that the person for whose use or benefit the action or suit is prosecuted, is entitled to the benefit of this section.

Oath of one of several plaintiffs sufficient.

2. When such action or suit is prosecuted for the use or benefit of two or more persons, as partners or otherwise, (of which fact the affidavit of either of them, or of any attorney for the plaintiff, shall be *prima facie* evidence,) and one of such persons shall take the oath prescribed by the act of November sixteenth, eighteen hundred and sixty-three, or the said oath as modified by the preceding section, and file proper certificate or evidence thereof, as aforesaid, such action or suit shall not be dismissed.

How oath may be taken.

3. Any oath mentioned in or required by this act, may be taken in this state before any person authorized to administer oaths; and out of the state before the judge or clerk of any court of record, or any notary public, justice, alderman, mayor or recorder. A certificate thereof under the hand of the officer taking the same, shall be sufficient, and his statement or certificate therein contained, as to his own official character, shall be received as *prima facie* evidence thereof.

Duty of court if oath not taken.

4. If any person shall hereafter sue out any execution, writ of *scire facias*, or supersedeas, upon or to any judgment, decree or order, heretofore or hereafter rendered or made, without having taken the oath required by the first section of this act, it shall be the duty of the court in which such execution or writ is sued out, upon the filing of an affidavit of the defendant in such execution or writ, or of any other person, that the person or persons suing out such execution or writ, has or have been guilty of any of the acts mentioned in the first section, to quash or dismiss such execution or writ, unless the person suing out and prosecuting the same, shall take and file the oath required by said section. But this section is subject to the qualifications contained in the first and second sections of this act.

CHAP. 80.—An ACT to amend and re-enact the Charter of the Town of Fairmont, in the County of Marion.

Passed February 28, 1865.

Be it enacted by the Legislature of West Virginia:

The charter of the town of Fairmont, in the county of Marion, is hereby amended and re-enacted so as to read as follows:

Corporate boundaries.

1. The corporate limits and boundaries of the town of Fairmont shall be as follows: Beginning at the mouth of Coal Run, thence up said run, north fifty-six and a quarter degrees west, thirty-five poles; north eighty-eight degrees west, thirty-five poles; north thirty-one and a half degrees west, up the eastern branch of said run, thirty-three poles, to a point near bridge across said branch of said run; north eighteen and two-thirds degrees east, sixteen poles; north twelve and a half degrees west, twenty-four and a half poles; north twenty-three and a quarter degrees west, crossing Maryland and Ohio river turn-

pike, eighteen poles, to stone near red oak; thence leaving said run north seventy-eight degrees east, eighty-eight poles, to post; south sixty-seven degrees east, twenty-five poles, to post on said Maryland and Ohio river turnpike; north eighty-seven degrees east, twenty and a quarter poles, to stone, corner of lot formerly owned by Oliver Jackson; thence south fifteen degrees east, eighty-eight poles, to stone on Monongahela river; thence up said river, with its meanderings to the beginning.

Municipal authorities.

2. The municipal authorities of said town shall be a mayor, recorder, and five councilmen, who, together, shall form a common council.

Corporation.

3. The mayor, recorder and councilmen, so soon as they have been elected and qualified as hereinafter provided, shall be a body politic and corporate, by the name of "The Town of Fairmont;" and shall have perpetual succession and a common seal; and by that name may sue and be sued, implead and be impleaded; may purchase and hold real estate necessary to enable them the better to discharge their duties, and needful for the good order, government and welfare of said town.

Powers of council.

4. All the corporate powers of said corporation shall be exercised by the said council, or under their authority, except where otherwise provided.

Officers appointed by council.

5. There shall be a town sergeant, a treasurer and commissioner of the revenue, appointed by the council, to continue in office at its pleasure, and perform the duties respectively as hereinafter prescribed, or as may be required by the council.

Same subject.

6. The duties of the office of recorder, treasurer and commissioner of the revenue may be discharged by the same person, or otherwise, as the council may from time to time determine.

How officers elected.

7. The mayor, recorder and councilmen shall be elected by the citizens of the said town who may be entitled to vote under this act, and (except when elected to fill vacancies,) for the term of one year, and until their successors shall have been elected and qualified, and shall be freeholders and residents in said town and entitled to vote for members of its common council.

When election to be held.

8. The first election under this act shall be held on the third Saturday in March, eighteen hundred and sixty-five, at the court house in said town under the supervision of a justice of Fairmont township; and annually thereafter there shall be an election on the same day in each year, at such place and under such supervision, rules and regulations as the council of said town may prescribe. The person conducting the first election shall grant certificates to the person elected, which shall be entered upon the records with the ordinances of said council, and their term of office shall commence on the first day of April next after their election.

Certificates of election.

9. All persons resident in said town and entitled to vote for county and township officers, shall be entitled to vote for mayor, recorder and councilmen. Qualification of voter.

10. When a vacancy shall occur from any cause in the office of mayor, recorder, or in council, the vacancy shall be filled by appointment by the council. Vacancies, how filled.

11. At all elections the vote shall be by ballot, and when two or more persons for the same office at any election shall receive an equal number of votes, the person or persons conducting such an election shall decide which of said persons shall be returned elected. And all contested elections shall be heard and determined by the council for the time being. Elections.

12. The mayor, recorder, councilmen, sergeant, treasurer and commissioner of the revenue shall each, before entering upon the duties of his office, and within ten days after being furnished with a certificate of his election, take and subscribe the oath of loyalty prescribed for county and township officers, and that they will truly, faithfully and impartially discharge the duties of their said offices, respectively, to the best of their abilities so long as they continue therein. The recorder shall take such oath or affirmation before a justice or other officer authorized to administer oaths, and thereupon he shall administer the oaths aforesaid to the other officers and councilmen. Certificates of the said oaths or affirmations shall be recorded in the journal of the proceedings of the council. Oaths of officers.

13. When any four of the newly elected councilmen shall have been so qualified, they shall enter upon their said offices and supersede the former councilmen. When new council to act.

14. If any one elected mayor, recorder or councilman shall not have been eligible, or shall fail or refuse to take the oath or affirmation required under this act, within the ten days aforesaid, such office shall be declared vacant, and the vacancy filled as hereinbefore prescribed, but in all cases from among the citizens of the town eligible to such office or position under this act. Vacancies.

15. The council shall be presided over at its meetings by the mayor, or, in his absence, by one of the councilmen selected by a majority of the council present, and a majority of the council shall be necessary to constitute a quorum to do business. Council.

16. The council shall cause to be kept in a journal, an accurate record of all its proceedings, by-laws, acts and orders, which shall be fully indexed and opened to the inspection of the voters of the town. Its journal.

17. The proceedings of the last meeting shall be read to the council, corrected where necessary, and signed by the person presiding for the time being. Upon the call of any member, the ayes and noes on any question shall be called and recorded in the journal. The mayor, though voting as a member of the council in cases of a tie, shall have the casting vote. Its proceedings.

Its powers.

18. The council so constituted shall have power within said town to lay off, open, curb and pave streets, alleys, walks and gutters for the public use, and to alter, improve and light the same, and have them kept in good order and free from obstructions on or over them; to regulate the width of side-walks and streets, and to order the side-walks, foot-ways and gutters to be curbed, paved and kept in good order, free and clean, by the owners or occupants of the adjacent property; to lay off public grounds and provide, contract for and take care of public buildings proper to the town; to prevent injury or annoyance to the public or individuals from any thing dangerous, offensive or unwholesome; to abate or cause to be abated any thing which, in the opinion of a majority of the whole council, shall be a nuisance; to regulate the keeping of gun-powder and other combustibles; to provide for the burial of the dead; and for this purpose may purchase and hold the necessary land for a cemetery, near or convenient to said town, and provide for its improvement and security; to provide for the regular building of houses and other structures in or for said town; for the making of division fences, and to provide for shade and ornamental trees, and against danger or damage from fires or contagious diseases; to provide a revenue for the town and appropriate the same, and to provide the annual assessment of taxable persons and property of the town; to adopt rules for the transaction of business and the government regulations of its own body; to promote the general welfare of the town, and protect the property and preserve peace and good order therein; to keep a town guard; appoint and order out a patrol for the town when deemed necessary; to appoint such officers as they may deem proper, including a sergeant, commissioner of the revenue and treasurer; to define their powers, prescribe their duties, fix their term of service and compensation, require and take from them bonds, with such sureties and in such penalty as the council may determine, conditioned for the true and faithful discharge of their duties, and remove them at pleasure, (all bonds to be made payable to the town by its corporate name); to erect or authorize, or prohibit the erection, of gas works or water works, in or near the town; to prevent injuries to or pollution of the same, for all which purposes named in this clause, except that of taxation, the council shall have jurisdiction for one mile beyond the borough; to regulate and provide for weighing and measuring of hay, coal and other articles sold or for sale in said town, and to regulate the transportation thereof through the streets, and generally to do such things as the council shall deem necessary for the interests, prosperity, peace and good order of the citizens of said town; Provided, that the streets and alleys shall not be extended east of Quincy street without the consent of the owners of the lands through which the streets and alleys are sought to be extended.

Its ordinances.

19. To carry into effect these enumerated powers and all others conferred upon the said town or its council, expressly or by implication, in this or any other acts of the legislature, the council shall have power to adopt and enforce all needful orders, by-laws and ordinances not contrary to the constitution and laws of this State, and to pre-

scribe, impose and enforce reasonable fines and penalties, including imprisonment for a term not exceeding thirty days, under the judgment and order of the mayor of the said town, or the person lawfully exercising his functions. The council, with the consent of the supervisors of Marion county, entered of record, may have the right to use the jail of said county for any purpose necessary in the administration of its affairs.

Town levy.

20. The annual levy ordered by the council may be upon all male persons within said town over sixteen years of age, dogs, hogs and other animals, and on all real estate within said town which is not exempt from state taxation; and all such other subjects in said town as may at the time be assessed with state taxes, provided the tax do not exceed one dollar on every one hundred dollars of value of unimproved lots, and seventy-five cents on every one hundred dollars of the value of real and personal property, or two dollars per head on each taxable person.

Town licenses.

21. When anything for which a state license is required is to be done within the said town, the council may require a town license to be had for doing the same, and may impose a tax thereon for the use of the town, and the council may, in any case, require from the person so licensed a bond, with sureties, in such penalty and with such conditions as it may determine.

Duties and powers of sergeant.

His compensation.

22. The sergeant shall collect the town taxes, fines, levies and licenses, and after thirty days from the time he may receive the books of the commissioner of the revenue of said town, may distrain and sell therefor in like manner as a sheriff may for state taxes, and shall in all respects have the same powers as a sheriff to enforce the payment and collection thereof, and shall, within the corporate limits of the town, exercise all the duties that a constable can legally exercise in regard to the collection of claims, executing and levying process, and shall be entitled to the same compensation therefor, and he and his securities shall be liable to all the fines, penalties and forfeitures that a constable is legally held liable to for any failure or dereliction in said office, to be recovered in the same manner and before the same tribunals that the same are now recovered against constables.

Unpaid taxes to constitute lien.

23. There shall be a lien on real estate for the town taxes assessed thereon from the commencement of the year for which they are assessed, and the council may order and require the same to be sold or rented by the sergeant at public auction for the arrears, with interest thereon, with such per centum as the council may prescribe for charges and expenses thereof, and may regulate the terms upon and time within which the same may be redeemed. No such sale or renting shall be ordered until such realty shall be returned delinqent, and the sale shall be after twenty days notice, posted at the court-house door and the post-office in said town.

Council may prohibit show.

24. The council may prohibit any theatrical or other performance, show or exhibition it may deem injurious to the morals or good order of the town.

Duty and powers of mayor.

25. The mayor shall be the chief executive officer of the town, shall take care that the by-laws, ordinances and orders of the council are faithfully executed, shall be ex-officio a conservator and justice of the peace in the town, and shall within the same, exercise all the powers and duties vested in justices, except that he shall have no jurisdiction in civil causes; shall have control of the police of the town, and may appoint special police officers; shall see that peace and good order are preserved, and that the persons and property are protected in the town; shall have power to issue execution for all fines and costs imposed by him, or may require the immediate payment thereof, and in default of such payment, may commit the party in default to the jail of the county until the fine and costs be paid, but the term of imprisonment in such case shall not exceed thirty days. He shall from time to time recommend to the council such measures as he may deem needful for the welfare of the town, and shall receive a compensation for his services to be fixed by the council, which shall not be increased or diminished for the term for which he was elected.

His compensation.

Duty and compensation of recorder.

26. The recorder shall keep a journal of the proceedings of the council, and have charge of and preserve the records of the town, and shall receive a compensation for his services to be fixed by the council, which shall not be increased or diminished for the term for which he was elected.

Treasurer.

27. All moneys belonging to said town, shall be paid over to the treasurer, who shall pay out the same upon the order of the mayor, countersigned by the recorder, and not otherwise, and for any default or liability upon the part of the treasurer or sergeant, the council, in the corporate name of said town, may on motion, after ten days' notice, obtain judgment before the circuit court of said county, on account thereof against them and their securities respectively, or any or either of them, or their heirs or legal representatives.

Town exempt from road expenses.

28. The said town, and taxable persons and property therein, shall be exempt from all expense or liability for the construction or repair of roads or bridges outside the corporate limits of said town.

Previous rights of town confirmed.

29. All rights, privileges and properties of the said town heretofore acquired and possessed, owned and enjoyed by any act now in force, shall continue and remain vested in said town in this act, and all laws, ordinances, acts, resolutions, rights and liabilities existing and now in force not inconsistent with this act, shall continue in full force and effect until regularly repealed or cancelled by a council elected as provided under this act.

CHAP. 81.—An ACT in relation to the Statutes of Limitation.

Passed March 1, 1865.

Be it enacted by the Legislature of West Virginia:

Period excluded from computation.

In computing the time within which any civil suit, proceeding or appeal shall be barred by any statute of limitations, the period from the seventeenth day of April, eighteen hundred and sixty-one to the date of the passage of this act, shall be excluded from such computation.

CHAP. 82.—An ACT making an Appropriation to the West Virginia Hospital for the Insane.

Passed March 1, 1865.

Be it enacted by the Legislature of West Virginia:

The sum of five thousand dollars is hereby appropriated for the purpose of placing a temporary roof of boards over that portion of the building of the West Virginia Hospital for the Insane which is now unfinished, and which has the lower tier of joists and window frames in place, and otherwise to protect the building from waste and damage, and to extend and enlarge the heating apparatus now in use.

$5,000 appropriated.

CHAP. 83.—An ACT allowing further time for the Collection of the Taxes of 1861 and 1862, in the county of Randolph.

Passed March 1, 1865.

Be it enacted by the Legislature of West Virginia:

Jesse F. Phares, the sheriff of Randolph county, is allowed until the thirty-first day of December, eighteen hundred and sixty-five, to collect and pay into the treasury of the state, all taxes and licenses assessed in said county, and remaining unpaid, for the years eighteen hundred and sixty-one and eighteen hundred and sixty-two; and he is authorized to distrain for the same for the time aforesaid; and upon the payment of the whole of the aforesaid taxes and licenses into the treasury on or before the thirty-first of December, eighteen hundred and sixty-five, the auditor is authorized to pay to said Phares, a commission not exceeding twenty per cent. upon any amount he may collect of said taxes and licenses and pay into the treasury as aforesaid.

Time for collection extended.

Commission of sheriff.

CHAP. 84.—An ACT in relation to a Judge for the Tenth Circuit.

Passed March 1, 1865.

Be it enacted by the Legislature of West Virginia:

1. The governor may appoint and commission a judge for the tenth circuit, to fill the vacancy now existing in that circuit; such temporary appointment to expire when the person elected at the next October election to fill such vacancy, shall be duly qualified to act.

Vacancy to be temporarily filled by governor.

2. An election shall be held in said circuit at the next October election, to fill said vacancy.

Election to fill vacancy.

CHAP. 85.—An ACT to authorize Suits and Proceedings which might, under existing laws, be brought in either of the counties of Clay or Nicholas, to be brought and prosecuted in the county of Kanawha.

Passed March 1, 1865.

Be it enacted by the Legislature of West Virginia:

Transfer authorized.

1. Any action at law, suit in equity, or other judicial proceeding, which, under the laws now in force, might be commenced and prosecuted in either of the counties of Clay or Nicholas, may be hereafter brought and prosecuted in the county of Kanawha, with the same force and effect, and to the same extent, as if commenced and prosecuted in either of the said counties of Clay or Nicholas.

Regulation respecting process.

2. All process in such suits and proceedings, including attachments, shall be issued by the clerk of the circuit court of Kanawha county, and directed to the sheriff or any constable of either of the counties of Kanawha, Clay or Nicholas, and shall be levied, served and returned by such sheriff or constable, or any private person, in the same manner and with like effect, as if directed to and served by the sheriff or any constable, or person of the county in which the same is to be levied or served.

Re-transfer.

3. Whenever the circuit court of the said county of Kanawha shall be of opinion, and so enter of record, that the courts in either of the said counties of Clay or Nicholas can be held therein with safety, the operation of this act as to such county shall cease. And all suits and proceedings then pending in said county of Kanawha, commenced under the provisions of this act, shall, for good cause shown, be transferred to, and tried and determined in the circuit court of the county wherein the same should have been brought, except for the provisions of this act.

Jury costs.

4. No jury shall be called or impanneled in any action or suit brought in the county of Kanawha under the provisions of this act, until the plaintiff shall deposit six dollars to pay jury expenses; which sum shall be paid by said clerk to the treasurer of said county.

CHAP. 86.—An ACT to render more available the Timber, Coal, Ore and Mineral Lands in this State.

Passed March 1, 1865.

Be it enacted by the Legislature of West Virginia:

Petition for right of way.

1. A person owning lands having timber upon them, or containing coal, ore or other minerals, and desiring to obtain a subterranean or surface right of way by railroad or otherwise, through or over a railroad, turnpike, or canal, or state or county road, or land belonging to another, for the purpose of mining for and conveying such minerals or timber to market, or otherwise making use of the same; or desiring to obtain land on or near a railroad, navigable stream, or public road for a place of deposit and shipment of such timber or minerals;

Or for land for place of deposit.

or desiring both of the said privileges, may petition the circuit court of the county in which the railroad, turnpike, or canal, or state or county road to be crossed over or under, or land proposed to be taken for such right of way, or some part therrof, is situated, or in which the land proposed to be taken for such place of deposit and shipment, or some part thereof is situated, for a writ of *ad quod damnum*, setting forth in his petition the matters which seem to him to show the necessity or propriety of granting the same, and the public and private benefit anticipated to accrue therefrom.

Notice of petition.

2. Of such petition, ten days' previous notice shall be given in the manner prescribed in the seventh section of the fifty-sixth chapter of the Code of Virginia, second edition, to each tenant, or the guardian or committee of the tenant of the freehold of any lands not owned by the petitioner which would be affected thereby; or if in case of a railroad, turnpike or canal, to some agent of the same, or if in case of a state road, to the board of public works, or if in case of a county road, to the board of supervisors of the county.

Writ of ad quod damnum.

3. If the court, on hearing the petitioner and other parties interested, deem it proper to issue the writ, such writ shall be directed to the sheriff of the county, commanding him to summon and impannel a jury of twelve discreet men, not interested in the matter nor related to any of the parties, to meet on or in view of the railroad, turnpike, or canal, or state or county road, or land proposed to be taken, on a certain day to be specified in the writ. But if the writ be not executed on the day so specified, it may be executed on such day as the sheriff may from time to time appoint, at least ten days' notice thereof being given to the parties; and if the inquest, being commenced, cannot be completed in one day, the jury shall stand adjourned from day to day till it is completed.

When to be executed.

Duty of jury.

4. The jury duly sworn by the sheriff, shall inquire and say whether, if the land proposed to be taken for the purposes specified in the petition, the mansion house of any person, or the outhouses, yard, garden or orchards belonging thereto, or any mill, warehouse, store or shop, will be taken or materially injured, with any other facts deemed pertinent by themselves. They shall also designate by proper boundaries or description, what land not belonging to the petitioner, should in their opinion, be set apart and taken for the purposes aforesaid, not more than fifty feet in width, for the said right of way, nor more than one acre of land for such place of deposit and shipment; and shall say what would be a just compensation therefor to the several owners thereof.

Inquest.

5. When the inquest is completed, it shall be signed by each juror and delivered to the sheriff to be returned with the writ.

Notice to person interested.

6. If by such inquest it appear that any person to whom notice was not given, will sustain damage if the land be taken, notice shall be given to him in the manner specified in the second section of this act, to show cause why the petition should not be granted.

Duty of court after inquest.

7. If by the inquest or other evidence, it appear to the court that by taking any land for the purpose aforesaid, the mansion house of any person, or the outhouses, yard, garden or orchards belonging thereto, or any mill, warehouse, store or shop, will be materially injured, no order shall be made allowing such land to be taken. But if it shall not so appear, the court shall then grant or refuse such order, as may seem to it proper; and if it be granted, may impose such conditions and terms on the petitioner as to it may seem right. The court may set aside the inquest and issue a new writ, if there appear good cause for so doing.

Nothing except right of way granted.

8. The provisions of this act shall not be so construed as to give any party or parties any other right in the proposed railroad, turnpike, or canal, or state or county road to be crossed, or land to be condemned under this act, except the right of crossing the same; and in all cases where the right shall be granted the applicant to cross any such railroad, turnpike, or canal, or state or county road, or land, the applicant shall be required so to arrange said crossings as not to interrupt the free use or navigation of any such canal or railroad.

Arrangement of crossings.

CHAP. 87.—An ACT to Incorporate the Monongahela and Lewisburg Railroad Company.

Passed March 1, 1865.

Be it enacted by the Legislature of West Virginia:

Names of corporators.

1. James Evans, William Lazier, Henry Dering, D. H. Chadwick, B. F. Smith, G. M. Hagans, William Wagner, William A. Hanway, Samuel Sares, S. S. Yeager, Alfred Yeager, Amos Courtney, E. C. Bunker, W. T. Willey, James T. McClaskey, Henry Potter, Andrew J. Stone, James J. Burns, Joseph W. Cromwell, George W. Martin, Felix S. Martin, Jacob Morgan, Oliver Jackson, Benjamin D. Fleming, Luther Haymond, John Irwin, Thomas S. Spates, James P. Bartlett, Benjamin F. Shuttlesworth, Waldo P. Goff, Adam Bumgardner, F. Robinson, Ira Hart, John Maxwell, A. W. Martin, F. Berlin, Levi Leonard, P. F. Pinnell, Andrew Poundstone, Thos. G. Farnsworth, J. D. Rapp, Valentine Strader, Richard Fretwell, Thomas J. Farnsworth, O. B. Loudin, E. G. Burr, Isaac A. Morgan, C. S. Haynes, George Clark, George W. Burner, William Hyre and Benjamin C. Rapp, and their associates, successors and assigns, and all who shall become stockholders, when ten thousand shares of the capital stock shall have been subscribed as hereinafter provided, are hereby made a body politic and corporate, by the name, style and title of the Monongahela and Lewisburg Railroad Company: Provided, said subscription shall be made in good faith within four years after the passage of this act.

Style of company

Proviso.

Route prescribed

2. The said company is hereby authorized to construct a railroad from some point on the Pennsylvania and West Virginia State line in the county of Monongalia, to be designated by said company, by the way of Morgantown, in the aforesaid county, Fairmont or Palatine, in the county of Marion, Clarksburg, in the county of Harrison, Buck-

hannon, in the county of Upshur, to the Covington and Ohio railroad near Lewisburg, in the county of Greenbrier, and to provide everything necessary for convenient transportation on the same.

Capital stock.

3. The capital stock of said company shall be five millions of dollars, divided into shares of fifty dollars each; and books may be opened by the said corporators, or any three of them, to receive subscriptions to the said capital stock, within two years after the passage of this act, at such places as said corporators, or any three of them, may designate.

How subscriptions to be received.

4. The said books shall be opened and the subscriptions received in the manner provided in the Code of Virginia, second edition, prescribing general regulations for the incorporation of railroad companies. The said company shall be subject to all the provisions and liabilities, and entitled to all the benefits of the aforesaid code, especially such as are specified in chapters fifty-six, fifty-seven, and sixty-one thereof, and of all other general laws now in force relating to railway companies, except so far as the provisions of this act are or may become inconsistent therewith.

Company subjected to provisions of code.

Increase of capital stock.

5. If the capital stock of said company shall be insufficient for the purposes of this act, the said company shall have power, and are hereby authorized to increase the same by addition of as many shares as may be deemed necessary; and said company shall have power to borrow money, to accept and receive donations in lands, money or other thing, from the Congress of the United States, or from other sources, for the purpose of carrying on the object of this act, and to pledge the property of the company for the payment of the same, and the interest that may accrue thereon; and the said company shall be required to commence the construction of their said railroad within five years from the passage of this act, and shall finish one-fourth thereof within ten years from the time of commencement.

Powers of company.

Commencement and progress of work.

Authority to issue bonds.

6. The president and directors of said company, or a majority of them, shall be and are hereby authorized to make and execute bonds or certificates of indebtedness, under the seal of the said company, for such sum or sums, and payable at such time or times, as to the said president and directors may seem proper: Provided, that nothing herein contained shall be taken to authorize the said company to issue anything in the nature of a bank note or other paper to be used for circulation as a currency.

Code of Virginia construed.

7. So much and such parts of the Code of Virginia hereinbefore recited, or of any other act or acts as may be inconsistent with any of the provisions of this act, shall be held not to apply to the company hereby incorporated, so far as the same may affect the charter granted by this act.

Alteration of charter.

8. The legislature reserves the right to alter or amend this act; but such alteration or amendment shall not affect or impair the right of the creditors of the corporation to have the property and assets thereof

applied in discharge of their respective claims, or of the stockholders to have the surplus which may remain after providing for the debts and liabilities of the corporation, distributed among themselves according to their respective interests.

CHAP. 88.—An ACT for the Protection and Safety of Passengers on Railroads.

Passed March 1, 1865.

Be it enacted by the Legislature of West Virginia:

Duty of railroad companies.

1. It is made the imperative duty of each and every railroad company in this state to keep all the doors of their passenger cars, in which passengers are carried, unlocked while the train or cars are in motion; and for each and every offense in violation of this act, the company shall be subject to a fine not exceeding one hundred dollars, recoverable before the circuit court or any justice in the county in which the offense may be committed.

Penalty for failure therein.

Agents and conductors criminally responsible

2. The agent or agents, conductor or conductors, having charge of trains or passenger cars shall be held criminally responsible for any violation of this act, and shall in the commission thereof be guilty of a misdemeanor, and, upon conviction, shall be fined not exceeding one thousand dollars and be imprisoned for a period not exceeding one year.

CHAP. 89.—An ACT to prevent Recruiting in this State by unauthorized Persons, in or for Military Organizations of other States.

Passed March 1, 1865.

Be it enacted by the Legislature of West Virginia:

Certain recruiting forbidden.

1. It shall be unlawful for any person or persons to enlist or recruit, or attempt to enlist or recruit in the state of West Virginia, men in or for any military organizations of any other state; or for any person or persons in this state to offer any bounty, premium, or fee of any kind, to induce residents of this state to go into any other state to enlist or be accepted as substitutes, or in any way to induce or attempt to induce emigration from the state for any such purpose:

Proviso.

Provided, that the provisions of this act shall not apply to any person or persons authorized to recruit for such military organization by the secretary of war or the governor of this state.

Penalty.

2. Any person found guilty of violating any of the provisions of this act, shall forfeit and pay for every such offence a fine of not less than three hundred dollars nor more than one thousand dollars, which shall go to the school fund; and shall be imprisoned in the jail of the proper county not less than thirty days nor more than one year, and in case he fails to pay the fine and costs assessed before or at the expiration of the term of his imprisonment as aforesaid, his imprisonment shall continue until such fine and costs shall be paid.

CHAP. 90.—An ACT legalizing the Record of certain deeds and other Writings.

Passed March 1, 1865.

Be it enacted by the Legislature of West Virginia:

All deeds and other writing admitted to record under chapter one hundred and twenty-one of the code of Virginia, by the clerks of the late county courts thereof, within this state, from the commencement of the last terms of said courts to the date of the qualification of the recorders of said counties, are hereby declared to be as legal and valid as if the provisions of the tenth section of said chapter had been complied with by the said clerks. What writings legalized.

CHAP. 91.—An ACT making Appropriations for the Payment of a Clerk for the Board created for the examination of certain Military Claims, and for Expenses of taking Testimony in the case of John W. Kennedy.

Passed March 1, 1865.

Be it enacted by the Legislature of West Virginia:

The sum of two hundred and fifty dollars is hereby appropriated for the payment of a clerk provided for by an act passed February twenty-fifth, eighteen hundred and sixty-five, entitled "an act creating a board for the examination of certain military claims." And fifteen dollars are hereby appropriated to James P. Rogers, a notary public of the city of Wheeling, for taking testimony in the case of John W. Kennedy, under direction of the joint committee. Clerk of board. James P. Rogers.

CHAP. 92.—An ACT to provide for the Sale of certain Lands for the Benefit of the School Fund.

Passed March 2, 1865.

Be it enacted by the Legislature of West Virginia:

1. The assessors for all the counties in this state which are now organized shall, within four months from the passage of this act; and the assessors for all the counties not now organized, shall within the same period from the time assessors may be elected and qualified for such unorganized counties, furnish to the recorders of their respective counties, any lists or copies thereof which may come to their possession, of all real estate purchased by any sheriff or collector, on behalf of the commonwealth of Virginia in the year eighteen hundred and sixty, for taxes due thereon. Duty of assessors. It shall be the duty of all recorders to whom such lists or copies thereof may be delivered, or into whose possession they may otherwise come, to secure and carefully file and preserve the same in their offices. Duty of recorders. Every recorder shall, within sixty days from the time such list or copy thereof comes into his possession, make out a copy thereof, properly certified by such recorder, and when so made and certified, shall be sent by him to the auditor. Said

recorder shall receive the same compensation that he receives for similar services in other cases. The auditor shall receive all such copies which appear to be properly certified, and file and preserve the same in his office.

Duty of auditor.

Redemption of certain lands.

2. All lands in this state heretofore vested in the state of Virginia by forfeiture, or by purchase at the sheriffs' sales for delinquent taxes and not released or exonerated by the laws thereof, or by the operation of the seventh section of the ninth article of the constitution of this state, may be redeemed by the former owners, by payment into the treasury of this state, upon the certificate of the auditor of the amount of taxes and damages due thereon at the time of such redemption, on or before the twentieth day of June, eighteen hundred and sixty-eight.

Lands not redeemed, to be sold.

2. All waste and unappropriated lands within this state, and all lands in this state heretofore vested in the state of Virginia by forfeiture or by purchase at the sheriffs' sales for delinquent taxes, not released and exonerated, or redeemed in the manner prescribed in the second section of this act, shall be sold for the benefit of the school fund, in the manner hereinafter directed.

Appointment and duty of commissioner of school lands.

4. It shall be the duty of the circuit courts of this state, from time to time, to appoint for each county of their circuits, a commissioner or commissioners, to be styled the commissioner of school lands, whose duty it shall be to ascertain and report to said courts the quantity of lands in his county subject to sale according to the preceding section, designating particularly the number of tracts and the quantity contained in each tract, and also the local situation, and the probable value of each tract, together with all the information which he may be enabled to procure in relation to the state of the title to such lands.

Sale of lands.

Place and notice of sale.

Surveys of such lands.

5. Upon the return of said commissioner, it shall be the duty of the said courts, by orders entered of record, to direct the said commissioner to make sale of said lands in the same manner in all respects, as in the case of other lands directed to be sold under decrees of said courts: Provided, that no such sale shall be made elsewhere than at the court house of the county in which the land directed to be sold is situated, on some court day for such county, nor unless public notice of the time and place of sale shall have been published in some newspaper nearest the place of sale, and posted at the door of the said court house, and at least four of the most public places in said county, for thirty days next preceding said sale. The said courts are also empowered and authorized, in all cases, to direct such surveys and divisions of said lands, as may be deemed necessary and expedient to promote the advantageous sales of said lands, the expenses of which surveys shall be reported to the courts aforesaid, and be paid out of the proceeds of the sales of said lands. But in no case shall the state be subjected to any expense by reason of said surveys beyond the proceeds of the sale of said lands, and no survey of any such lands

shall be executed unless the surveyor will consent to receive his compensation for his services in making said surveys entirely out of the proceeds of said lands.

Manner and terms of sale.

6. All sales made by virtue of this act, shall be made by the commissioner appointed as aforesaid under the orders of the said courts, in the manner and on the terms herein mentioned. He shall require one-fourth of the purchase money in hand, and require bond with good security for the payment of the residue thereof, in twelve months from the date of said sale, with interest from such date; and he shall moreover, reserve the title to said lands by way of further security for the payment of the deferred instalment. The said commissioner shall return a report of the sales made by him to the auditor, and also to the court from which he received his appointment, designating particularly the local situation of each tract, the name of the purchaser, and the price at which it was sold, and also the costs of sale; and the bonds taken for the deferred instalments of the purchase money shall be returned by the commissioner to the court by which he may have been appointed, and shall have the force of judgments, and in case of the failure of the obligors to pay the amount thereof to the commissioners when they shall become due, it shall be the duty of the commissioner to employ a competent and reliable attorney to move, having first given the obligors ten days' notice of such motion, for an award of execution on said bonds, for which service he shall be allowed the same fees as on other motions of a like kind, which shall, together with the other necessary costs and commissions attending the collection of said bonds, be taxed and included in said executions. The said commissioner shall also pay into his court all moneys collected or received by him by virtue of any such sales, and the said court shall then make an order allowing him such commissions, not exceeding ten per cent, and other reasonable expenses attending the survey and sale of said lands, as in its judgment may seem proper, and direct the residue thereof to be paid into the state treasury for the benefit of the school fund.

Report of sale.

Effect of bonds for purchase money.

Compensation of commissioner.

Prosecuting attorney.

7. It shall be the duty of the prosecuting attorney in each county, to appear and represent the interests of the state in all matters pertaining to the sales and other proceedings directed by this act.

Oath and bond of commissioner.

8. No commissioner under this act shall enter upon the discharge of the duties of his office, until he shall have taken an oath in open court to execute the duties faithfully and impartially, and also shall have given bond in a reasonable sum, payable to the state of West Virginia, in open court, with at least two good securities, conditioned that he will faithfully and honestly account for and pay over all money, bonds and other securities according to the order of said courts, and do and perform all other duties of his said office according to the provisions of this act.

Conveyance to purchaser.

9. Whenever any purchaser of any lands at any sale made under the provisions of this act, shall have paid the whole amount of pur-

chase money by him stipulated to be paid therefor, it shall be the duty of the court by whose order the said sale was made, to direct the said commissioner to convey to the said purchaser by deed with warranty, all the interest of the state in said lands.

Title by possession confirmed.

10. No lands shall be sold under the provisions of this act, when the same shall have been in the actual possession of any person claiming title thereto for the space of ten years continuously before the same may be reported to court for sale, if such person in the possession thereof has paid all taxes charged, or properly chargeable thereon, and the title of the state in and to any such lands shall be deemed to be transferred to and vested in such occupant.

Conveyance to purchaser in 1860.

11. Any person who may have purchased any real estate at a sale thereof made in the year eighteen hundred and sixty, for the taxes due thereon, and who has failed to obtain a deed therefor, either by reason of the loss of the receipt of the sheriff for the purchase money, or by the failure of the sheriff to give such receipt, may file his petition in the circuit court of the county in which such real estate, or any part thereof may be, setting forth the person in whose name such real estate was sold, the quantity and description thereof, the amount of tax for which it was sold, and the amount due thereon at the filing of such petition; and the reasons why he had not obtained such deed. If the court shall be satisfied of the truth of the facts stated in said petition, it shall order a deed to be made to such purchaser for said real estate, in the manner prescribed by chapter thirty-seven of the code of Virginia, upon the payment to the sheriff of all taxes due thereon.

CHAP. 93.—An ACT to provide Free Schools for the City of Wheeling.

Passed March 2, 1865.

Be it enacted by the Legislature of West Virginia:

School district. Board of education.

1. The city of Wheeling and parts of townships connected therewith shall constitute but one school district; and the board of education thereof shall consist of three commissioners from each of the townships of the district, elected by the qualified voters thereof in conformity with the provisions of the second section of "an act for the establishment of a system of free schools," passed December tenth, eighteen hundred and sixty-three. The official term of all commissioners elected under this act shall commence on the first day of July next succeeding the time of their election.

Rights and powers of board.

2. The board of education for the school district of Wheeling shall be invested with the same rights, and shall exercise the same powers and perform the same duties as appertain to the boards of education of the several townships by the "act providing for the establishment of a system of free schools," passed December tenth, eighteen hundred and sixty-three, except so far as shall be otherwise provided in this act. The said board shall, at their first meeting, elect one of their number clerk, who shall perform all the duties which are devolved by the last mentioned act upon clerks of townships as secretaries of boards

Clerk of board.

of education, but shall not in consequence of being clerk be deprived of his right to vote upon any question pending before the board. Whereever the word "township" occurs in the act above mentioned, it shall be construed to mean "school district" whenever necessary to give effect to the provisions of this act. The treasurer of Ohio county shall be treasurer of all the funds for school purposes belonging to the school district of Wheeling, and he shall conform to all the requirements made of township treasurers in regard to funds for school purposes. Said board of education may hold stated meetings at such times as they may appoint, ten members of said board at all meetings thereof constituting a quorum for business; and special meetings thereof may be called by their president or at the request of ten members, by the clerk, on giving one day's notice of the time and place of the same.

Treasurer of district funds.

Meetings of board.

3. The board of education of the school district of Wheeling shall have power to establish in said district an adequate number of primary schools, in which the rudiments of education shall be taught; and they shall have power to divide the said district into three sub-districts, and to establish in each of said sub-districts a grammar school, to be so located as best to accommodate the inhabitants thereof, in which shall be taught such of the common branches of education, and to such extent as the said board shall prescribe; and said board may also have power to establish a central high school, in which shall be taught algebra, geometry, natural philosophy, chemistry, philosophy, with such other branches of mathematics, or natural sciences or literature as the board may determine, including such as may be necessary for the admission of pupils to the colleges of this or neighboring states.

Primary schools.

Grammar schools.

High school.

4. Admission to the various schools in this system shall be gratuitous to all white children, wards and apprentices of actual residents in said district, between the ages of six and twenty-one years, and the board of education shall have power to admit to said schools other pupils not under the age of six years upon such terms or upon the payment of such tuition as they may prescribe, provided that no pupil shall be admitted to the grammar schools who fails to sustain a thorough examination in the studies of the primary schools, and no pupil shall be admitted to the high school who fails to sustain a thorough examination in the various studies of the grammar schools; and provided further, that the said board shall have power to make and enforce rules for the exclusion of children when their attendance would be dangerous to the health or detrimental to the morals or discipline of the school.

Admission to the various schools.

5. Said board shall have power to make all necessary rules and regulations for the government of said schools; for the admission of pupils therein, and for the examination that pupils must pass preparatory to admission into the schools of higher grade than the primary; to purchase all necessary stationery, text books and books of reference for the use of teachers and indigent children, and to incur all other ex-

Powers of board of education.

penses necessary to make the system efficient for the purposes for which it is established, and to pay the same from the school funds of said district.

District superintendent.

6. The board of education of said school district shall, annually, at their first meeting in July, or at the same meeting adjourned, elect and fix the salary of the superintendent of schools of the district of Wheeling, whose duty it shall be to perform, in and for the school district of Wheeling, all the duties which in the general school law of the state are devolved on county superintendents, so far as they are not inconsistent with or superceded by the provisions of this act; also such other appropriate duties as agent of the board as said board may devolve upon him; but the said board shall have power to appoint a committee, which shall include said superintendent, and whose duty it shall be to examine teachers and grant certificates in accordance with the provisions of the thirty-fifth section of the general school law.

His duty.

Committee of examination.

General school law not effect district.

7. The provisions of the general school law, in regard to county superintendents, shall be held applicable in Ohio county only to the schools of those townships not included in the school district of Wheeling.

Duty of state superintendent and auditor.

8. The state superintendent, in his report to the auditor, shall specify separately the results of enumerations of youth in the school district of Wheeling, and in the remainder of the county. And the auditor in apportioning money for school purposes shall apportion to the school district of Wheeling and the rest of the county separately, according to their respective numbers of youth as shown in the list furnished him by the state superintendent.

Township levies.

9. At the annual meeting of any of the townships included within the said school district, the qualified voters present on levying taxes for school purposes, as provided in the thirty-ninth section of the general school law, passed December tenth, eighteen hundred and sixty-three, may, by a majority vote, appropriate the avails of such taxes to be expended within their respective townships for any of the following purposes, to wit:

For night schools.

For the establishment and maintenance of night schools for the benefit of such youth of their townships as are not able to attend the day schools.

For extra branches of study.

For providing instruction in the free schools of their township in the German language, linear and perspective drawing, vocal music or other studies not included in the regular course of study prescribed by the board, but approved of by said board, and to be under the supervision and management of the superintendent of the schools.

For furniture, &c.

For extra furniture or apparatus for scientific illustration or gymnastic purposes; for libraries, books of reference, maps or charts for the use of said schools; for introducing superior methods of ventilation or furnishing bells for the school houses.

For works of art.

For pictures, busts or other works of art for the adornment of the school rooms.

For the embellishment of the school grounds with shade trees, shrubbery, &c. For embellishing grounds.

10. It shall be the duty of the board of education to determine at their annual meeting in the month of July, as near as practicable, the amount of money necessary, in addition to all other available funds, to continue the schools of the district for a term not less than nine school months, and they shall cause such amount to be assessed on all the taxable property of the district, not exceeding forty cents upon the one hundred dollars valuation thereof, and the same shall be levied and collected by the same officers and in the same manner as county levies are made and collected, and shall be paid over to the treasurer of Ohio county under the conditions prescribed in the fortieth and forty-first sections of the general school law as modified in this act. The collecting officer for collecting and paying over the taxes to be assessed by said board of education, shall be entitled to receive a commission of three per cent upon the amount collected, and no more. Assessment and collection of school taxes. Commission of collector.

11. All parcels of land within the school district of Wheeling which have been heretofore conveyed to the school commissioners of the city of Wheeling, or the school commissioners of Ohio county, as sites for public schools, and all real and personal property held by either of said boards of school commissioners for school purposes, within said district shall be deemed to be vested in the board of education of the school district of Wheeling. Certain property vested in board.

12. The present clerk of school commissioners of the city of Wheeling shall, on or before the first day of July of the present year, examine the accounts of moneys received and expended by the present and the late sheriffs of Ohio county for school purposes, comparing them with the appropriations which have from time to time been made by said commissioners, and also with the vouchers which may be exhibited by said sheriffs, and shall certify the amount of any balances which may be found due to the schools within said district to the superintendent of schools of said district, as soon as he shall have been elected. And the said sheriffs are hereby authorized and required to pay over such amounts to the treasurer of Ohio county, on the order of said superintendent, said order to be issued on the same conditions as are prescribed in the general school law for the payment of school funds to township treasurers. Duty of present clerk of school commissioners. Duty of sheriff of Ohio county.

CHAP. 94.—An ACT making an Appropriation for the Board of Public Works.

Passed March 2, 1865.

Be it enacted by the Legislature of West Virginia:

The sum of one hundred dollars is hereby appropriated for the contingent expenses of the board of public works. $100 appropriated

CHAP. 95.—An ACT in relation to the Coal River Navigation Company.

Passed March 2, 1865.

Preamble.

Whereas, The locks and dams of "The Coal River Navigation Company," situate in the counties of Kanawha and Boone, have been to a great extent destroyed and rendered worthless, and the company completely disorganized: And whereas, the public interest imperatively demands that said company should be speedily reorganized, in order to prevent the said locks and dams from being totally destroyed, therefore,

Be it enacted by the Legislature of West Virginia:

Duty of board of public works.

1. The board of public works are hereby authorized and required to take such steps for the speedy reorganization of the said Coal River Navigation company, as in their opinion will be most conducive to that end, in order that the works of said company may be protected from total destruction.

Sale authorized.

Proviso.

2. In case the said board cannot otherwise procure the reorganization of said company, they are hereby authorized to sell at public auction the interest of this state in said company: Provided, that before said sale shall be confirmed, the purchaser or purchasers shall engage in sufficient bonds (to be approved by said board of public works,) that the state of West Virginia shall not be held liable for any bonds or evidences of indebtedness heretofore issued by said Coal River Navigation Company, or by the state of Virginia for the use of said company.

JOINT RESOLUTIONS.

[No. 1.] In reference to printing the Governor's Message.

Resolved by the Legislature of West Virginia: That five thousand copies of the governor's message be printed for the use of the two houses.

ADOPTED, January 17, 1865.

[No. 2.] Referring the Documents accompanying the Governor's Message.

Resolved by the Legislature of West Virginia: That the documents accompanying the governor's message be referred to a joint committee of five, three to be appointed for the House and two for the Senate, to report what portions of the said documents, and what number of each, should be printed for the use of the two houses.

ADOPTED, January 17, 1865.

[No. 3.] Fixing a time for Electing a Senator of the United States.

Resolved by the Legislature of West Virginia: That the two houses proceed on Tuesday, the thirty-first instant, at eleven o'clock, A. M., to the election of a Senator of the United States, to fill the vacancy that will occur on the fourth of March next, by the expiration of the term of Hon. W. T. Willey.

ADOPTED, January 20, 1865.

[No. 4.] Designating certain Documents to be Printed.

Resolved by the Legislature of West Virginia: 1. That there be printed for the use of the two houses, one thousand copies each of the following documents communicated by the governor with his message, viz:

Report of the treasurer, with the statements accompanying the same.

Report of the commissioner of immigration.

Report of the adjutant general on military claims, without the vouchers or papers accompanying the same.

Reports and letters relating to the Soldiers' National Cemetery.

Letters relating to land scrip for agricultural college.

Correspondence relating to the Bank of Virginia, at Charleston, Kanawha county.

Report of the state superintendent of free schools, with papers accompanying the same.

Report of the superintendent of the penitentiary.

Report of the quartermaster general, and accompanying papers.

The annual report of the adjutant general, with the accompanying papers.

2. That of the thousand copies to be printed as above of the annual report of the adjutant general and accompanying papers, two hundred and fifty be half bound, to be distributed, one copy to each member of the legislature, and the remainder as the governor may direct.

ADOPTED, January 20, 1865.

[No. 5.] Appointing a day for Instituting Proceedings for the Removal of John W. Kennedy, Judge of the Tenth Judicial Circuit.

Resolved by the Legislature of West Virginia: That notice be given to John W. Kennedy, judge of the tenth judicial circuit, that the Senate and House of Delegates will, on Thursday, the sixteenth day of February next, proceed to consider, and thereafter to determine the question of his removal from office, pursuant to the thirteenth section of the sixth article of the constitution, and that the following causes are alleged for such removal, that is to say:—

I. Disloyalty.

In this, that on or about the first day of May, eighteen hundred and sixty-one, the said John W. Kennedy rode through the streets of Harper's Ferry, in the county of Jefferson, waiving his hand, and made use of the following language: "Huzza! Old Abe Lincoln has run away from Washington City—Huzza!"

Further, that on or about the first day of April, eighteen hundred and sixty-four, the said John W. Kennedy, by virtue of his office as judge of the tenth judicial circuit, did appoint a rebel named Daniel Sheets, sheriff of Jefferson county; and that on or about the first day of October, eighteen hundred and sixty-four, the said John W. Kennedy was at Harper's Ferry, in Jefferson county, attending a convention, endeavoring to get said Sheets the nomination for sheriff of said county.

Further, that on or about the first day of April, eighteen hundred and sixty-four, said John W. Kennedy appointed a rebel named Thomas Hollis, sheriff of Berkeley county. Said Thomas Hollis had been a volunteer in the rebel army, and held a position in the rebel quartermaster's department. Said Thomas Hollis has been notoriously disloyal since the war commenced.

Further, that on or about the twentieth day of September, eighteen hundred and sixty-three, the said John W. Kennedy, then holding a commission as judge of the tenth judicial circuit, said, at the McLure House, in the city of Wheeling, West Virginia, whilst speaking of the restored government of Virginia, that the restored government of Virginia was an usurpation, and that the government of West Virginia was a bogus concern.

II. Non-residence in the tenth judicial circuit.

In this, that the said John W. Kennedy has been for a long time a non-resident of the tenth judicial circuit, but has been for the last three months a resident of the city of Baltimore, State of Maryland.

ADOPTED, January 21, 1865.

[No. 6.] Directing the printing of the Auditor's Report.

Resolved by the Legislature of West Virginia: That the public printer be directed to print, for the use of the two houses, one thousand copies of the auditor's report transmitted by the governor on the twentieth of January, eighteen hundred and sixty-five.

ADOPTED, January 21, 1865.

[No. 7.] Appointing a Time for the Election of State Superintendent of Free Schools.

Resolved by the Legislature of West Virginia: That the two branches will proceed on Thursday, the second day of February next, at the hour of eleven o'clock, A. M., to elect a state superintendent of free schools, to fill the vacancy which will occur on the third day of March next, by the expiration of the term of Prof. W. R. White, the incumbent.

ADOPTED, January 23, 1865.

[No. 8.] Instructing the Members of Congress from this State to vote for the Constitutional Amendment for abolishing Slavery.

Resolved by the Legislature of West Virginia: That our senators in congress be instructed, and our representatives requested, to cast their votes in favor of the proposed amendment to the constitution of the United States for the abolishment of slavery.

ADOPTED, January 23, 1865.

[No. 9.] Appointing a Time for opening and counting Election Returns.

Resolved by the Legislature of West Virginia: That Tuesday next, the twenty-fourth instant, at eleven o'clock, A. M., be appointed for opening the returns of the late election for governor, secretary of the state, auditor and treasurer, and ascertaining and declaring the result pursuant to the fifth section of the fifth article of the constitution, and the thirty-sixth section of the act to regulate elections by the people.

ADOPTED, January 23, 1865.

[No. 10.] Raising a Joint Committee to consider the subject of immediately abolishing Slavery in this State.

Resolved by the Legislature of West Virginia: That a special committee of five on the part of the house, and three on the part of the senate, be appointed to inquire into the expediency and constitutionality of providing for the immediate abolishment of slavery in this state, and that they report by bill or otherwise.

ADOPTED, January 23, 1865.

[No. 11.] Directing the Auditor to furnish certain Information to the State Superintendent of Free Schools.

Resolved by the Legislature of West Virginia: That the auditor report immediately to the state superintendent of free schools the amount of the capitation tax of eighteen hundred and sixty-one, eighteen hundred and sixty-two, eighteen hundred and sixty-three, and the amount to which each county is now entitled.

ADOPTED, January 27, 1865.

[No. 12.] Directing the Governor to present Flags to certain Regiments of this State.

Resolved by the Legislature of West Virginia: 1. The governor is hereby authorized to present to the First Veteran Regiment of Volunteer Infantry of this state a suitable flag, inscribed on opposite sides with the names of the engagements in which the respective regiments composing the "First" have participated; and he is hereby further authorized to present to each of the old regiments of this state, not heretofore provided for in this respect, a suitable flag, appropriately inscribed.

2. The expenses incurred under authority conferred by the foregoing resolution, shall be paid out of the civil contingent fund.

ADOPTED, January 27, 1865.

[No. 13.] Raising a Joint Committee to Examine the Jail of Ohio County.

Resolved by the Legislature of West Virginia: That a committee of two on the part of the senate, and three on the part of the house of delegates, be appointed to examine and report on the condition of the jail of Ohio county, or that part now used as a penitentiary for this state.

ADOPTED, January 30, 1865.

[No. 14.] Ratifying the proposed Amendment to the Constitution of the United States abolishing Slavery.

Whereas, the senate and house of representatives of the United States of America in congress assembled, by a concurrent vote of two-thirds of both houses, has proposed to the legislatures of the several states the following amendment to the constitution of the United States, to be classified as article thirteen, of the amendments to said constitution, namely:

"ARTICLE XIII.

1. Neither slavery nor involuntary servitude, except as a punishment for crime, whereof the party shall have been duly convicted, shall exist within the United States at any place subject to their jurisdiction.

2. Congress shall have power to enforce this article by appropriate legislation;" therefore,

Resolved by the Legislature of West Virginia: That the said proposed amendment is hereby ratified.

ADOPTED, February 3, 1865.

[No. 15.] Raising a Commission on the subject of Normal Schools.

Resolved by the Legislature of West Virginia: That the governor appoint a commission consisting of five persons, whose duty it shall be to make due examination and report to the next legislature a definite plan for the location, internal arrangement and support of one or more normal institutions.

ADOPTED, February 3, 1865.

[No. 16.] Requesting our Senators and Representatives in Congress to procure an Amendment to the National Banking Law.

Resolved by the Legislature of West Virginia: That our senators and representatives in congress be requested to procure, if possible, an amendment to the act of congress, approved June third, eighteen hundred and sixty-four, entitled "An act to provide a national currency, secured by a pledge of United States bonds, and to provide for the circulation and redemption thereof," so as to allow state banks having branches to become national banking associations under the said act, and still use a portion of their capital for banking purposes and keep offices of discount and deposit at the several places where such branches are now located.

Resolved further, That the president of the senate and speaker of the house of delegates be directed to certify and forward a copy of these resolutions to each of our senators and representatives in congress.

ADOPTED, February 4, 1865.

[No. 17.] Requesting the Exemption of certain State Troops from Draft.

Whereas, The people of West Virginia have at all times responded with alacrity to the calls of the president of the United States for troops to aid in the suppression of the rebellion: And whereas, it has been necessary to a great extent that such troops should be employed elsewhere than in this state, in consequence of which our border counties have been in many cases left entirely unprotected: And whereas, in order to protect such counties as much as possible, the governor of the state has been compelled, and will still be compelled, at great expense, to employ state troops for that purpose: And whereas, the late call of the president of the United States for three hundred thousand additional volunteers, will require nearly or quite all of the able bodied men in the counties on or near the border, and thereby deprive such counties of all protection whatever, therefore

Resolved by the Legislature of West Virginia: That his excellency, the president of the United States, is hereby respectfully requested to exempt from draft such of the state troops of this state as may actually be employed by the governor in defense of the border counties, while in active service, and to cause a credit to be given to this state upon her quota under the late call for three hundred thousand men, for the full amount of troops so employed.

Resolved, That his excellency, the governor, be requested to transmit a copy of the foregoing preamble and resolution to the president of the United States, and request his compliance therewith.

ADOPTED, February 8, 1865.

[No. 18.] Requesting our Members of Congress to secure an Act refunding certain sums expended by this State for Military purposes.

Whereas, The state of West Virginia has expended large sums of money for military purposes which are justly chargeable to the government of the

United States, no part of which has ever been paid by the United States government,

Resolved by the Legislature of West Virginia: That our senators in congress be instructed, and our representatives requested, to use their most earnest efforts to secure the passage of an act refunding to this state the sums thus expended.

Resolved, That the governor be requested to forward a copy of the foregoing preamble and resolution to each of our senators and representatives at Washington.

ADOPTED, February 11, 1865.

[No. 19.] Fixing a time for Electing a Public Printer.

Resolved by the Legislature of West Virginia: That the two branches will proceed on Tuesday, the fourteenth instant, at eleven o'clock A. M., to elect a public printer.

ADOPTED, February 11, 1865.

[No. 20.] Providing for a Committee to Investigate the Charges against John W. Kennedy, Judge of the 10th Circuit.

Resolved by the Legislature of West Virginia: That a committee of three from the house and two from the senate, be appointed to investigate the charges against John W. Kennedy, judge of the tenth judicial circuit.

ADOPTED, February 13, 1865.

[No. 21.] Respecting the Branch of the Bank of Virginia, at Charleston.

Resolved by the Legislature of West Virginia: 1. The governor is hereby authorized to employ such person as he may judge proper, to examine and report to him what interest this state has in the branch of the bank of Virginia, at Charleston, the nature and condition of its assets, and the measures necessary to protect the interest of the state in relation thereto.

2. The person having the custody or control of the books and papers of said branch, is hereby directed and required to submit the same to the inspection and examination of the person so to be appointed by the governor.

3. The governor is authorized, in his discretion, to institute suit or suits at law or in equity, in the name of the state or otherwise, as in his judgment may be necessary to protect the interest of the state therein, and that he pay the expenses attending the same out of the civil contingent fund.

ADOPTED, February 17, 1865.

[No. 22.] Authorizing the Secretary of the State to employ a Clerk.

Resolved by the Legislature of West Virginia: That the secretary of the state be and he is hereby authorized to employ in his office such clerical assistance as may be necessary to secure the prompt and correct transaction of the business therein, and to pay for the services rendered out of the fund appropriated for contingent expenses of his office.

ADOPTED, February 18, 1865.

[No. 23.] Proposing to celebrate the Anniversary of Washington's Birthday.

Resolved by the Legislature of West Virginia: That the Senate and House of Delegates will celebrate the memory of George Washington on the twenty-second instant, by causing his farewell address to be read in joint session in the hall of the House of Delegates.

ADOPTED, February 20, 1865.

[No. 24.] Postponing the Trial of Judge Kennedy on the part of the Senate.

Resolved by the Legislature of West Virginia: The joint order of this day for the trial of judge John W. Kennedy, is postponed on the part of the Senate until the House of Delegates shall have acted on the subject.

ADOPTED, February 23, 1865.

[No. 25.] Authorizing the Board of Public Works to let out the Parkersburg and Staunton Turnpike.

Resolved by the Legislature of West Virginia: That the board of public works be authorized to let out so much of the Staunton and Parkersburg turnpike road as lies within the counties of Wood and Wirt, for such time as said board may deem expedient, to such person or persons as will agree to repair and put the same in good order for use, including the bridges, for the tolls that may be collected on such part of said road: the said board taking such bond from the lessees, with such security, and in such penalty as it may deem sufficient, conditioned for the repairing and putting in order as aforesaid.

ADOPTED, February 27, 1865.

[No. 26.] Removing John W. Kennedy, Judge of the Tenth Circuit.

Whereas, John W. Kennedy, judge of the tenth circuit, has been placed upon trial before the legislature of this state, upon charges and specifications contained in a joint resolution adopted by the said legislature on the twenty-first day of January, eighteen hundred and sixty-five;

And, whereas, it is proved to the satisfaction of the legislature that on or about the first day of April, eighteen hundred and sixty-four, the said John W. Kennedy, by virtue of his office as judge of the tenth judicial circuit, did appoint Thomas Hollis sheriff of Berkeley county, the said Thomas Hollis then being a rebel;

And, whereas, it is further proved to the satisfaction of the legislature, that on or about the twentieth day of September, eighteen hundred and sixty-three, the said John W. Kennedy, then being judge of the tenth judicial circuit, did, at the McLure House, in the city of Wheeling, West Virginia, in a certain conversation then and there had by him, say that "the restored government of Virginia was an usurpation," and that the government of West Virginia was a "bogus concern;" therefore,

Resolved by the Legislature of West Virginia: That John W. Kennedy be and he is hereby removed from the office of judge of the tenth judicial circuit.

ADOPTED, February 27, 1865.

[No. 27.] Relating to the Arrangement of the Military Sub-Districts in Organized Counties.

Resolved by the Legislature of West Virginia: That the governor be requested to take the necessary steps to have the military sub-districts of the state so altered and arranged that they will correspond with the townships in such counties as are organized into townships.

ADOPTED, February 28, 1865.

[No. 28.] Relating to the Revenue of Cabell County for 1861 and 1862.

Resolved by the Legislature of West Virginia: 1. John B. Baumgardner, collector of the revenue for Cabell County for the years eighteen hundred and sixty-one and eighteen hundred and sixty-two, is hereby authorized and required to place the revenue of the said county for the years aforesaid remaining in his hands uncollected, in the hands of the sheriff of Cabell county for collection, and take his receipt therefor and forward the same to the auditor on or before the first day of April next, and it shall be the duty of said sheriff to receive, collect and account for the same in the same manner as the revenue of said county for the year eighteen hundred and sixty-five is collected and accounted for.

2. The auditor shall not be required to make a final settlement with said Baumgardner until the said sheriff shall make his return in regard to the revenue placed in his hands for collection as aforesaid.

ADOPTED, February 28, 1865.

[No. 29.] Proposing an Amendment to the Constitution of the State.

Resolved by the Legislature of West Virginia: The following is proposed as an amendment to the constitution of this state, to be added at the end of the first section of the third article thereof, to become part of the said constitution when ratified according to the provisions thereof, namely:

"No person who, since the first day of June, eighteen hundred and sixty-one, has given or shall give voluntary aid or assistance to the rebellion against the United States, shall be a citizen of this state or be allowed to vote at any election held therein, unless he has volunteered into the military or naval service of the United States and has been or shall be honorably discharged therefrom."

ADOPTED, March 1, 1865.

[No. 30.] Providing for the Publication of the Amendment proposed to the Constitution of this State.

Resolved by the Legislature of West Virginia: The public printer is hereby authorized to contract for the publication of the proposed constitutional amendment passed by this Legislature, for at least three months prior to the next general election, in one newspaper in each of the counties of this state in which a newspaper is printed during that period.

ADOPTED, March 1, 1865.

[No. 31.] Joint Resolution providing for the Distribution of the Acts and Journals.

Resolved by the Legislature of West Virginia: That the five hundred copies of the acts in sheets, to which the members of this Legislature are entitled, be by the public printer bound as the other acts of the session are bound, and delivered to the clerk of the House of Delegates, whose duty it is made to forward the same as soon as practicable, to the members of this Legislature.

Resolved further, That the sergeant at arms of the House of Delegates pay to the clerk of that branch, out of the fund appropriated for expenses of the Legislature, sixty dollars, to pay cost of forwarding to the members of the Legislature the remaining sheets of the journals of the two Houses, the acts mentioned in the preceding resolution, and the bound journals of the two Houses at the present session.

ADOPTED, March 2, 1865.

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ACTS

OF THE

LEGISLATURE

OF

WEST VIRGINIA,

AT ITS

FOURTH SESSION,

COMMENCING JANUARY 16TH, 1866.

JUNE 20 1863

WHEELING:
JOHN FREW, PUBLIC PRINTER.
1866.

ACTS.

CHAP. 1.—An ACT to amend and re-enact Sections 3 and 4 of Chapter 102 of the Code of Virginia, second edition.

Passed January 25, 1866.

Be it enacted by the Legislature of West Virginia:

Section third and fourth of chapter one hundred and two of the code of Virginia, second edition, are amended and re-enacted so as to read as follows:

Restraint of distempered cattle.

"3. Every person shall restrain his distempered cattle or sheep, or such as are under his care, that they may not go at large off the land to which they belong, and no person shall drive any distempered cattle or sheep into or through the state, or from one part thereof to another, or over or across any public road in the state; and when any such cattle or sheep shall die, the owner thereof or person having them in charge shall cause them to be buried, with their hides on, four feet deep. If any person shall offend against this section in any respect, he shall forfeit four dollars for every head of such cattle or sheep."

Penalty.

Enforcement by Justices.

"4. Any justice, upon proof before him, that any cattle or sheep are going at large, or are driven in or through his county or township, in violation of the preceding section, may direct the owner to impound them; and if he fail to do so, or suffer them to escape from the pound before obtaining from a justice a certificate that they may be removed with safety, the justice giving such direction, or some other justice shall order them to be killed and buried four feet deep with their hides on, but so cut that none may be tempted to take them up."

CHAP. 2.—An ACT legalizing the payment of money by Superintendents of Schools to Treasurers of Counties for the use of Free Schools.

Passed January 29th, 1866.

Be it enacted by the Legislature of West Virginia:

Payment legalized

1. That the payment of money belonging to the indigent fund in the hands of the late superintendents of schools to the county treasurers for the use of free schools be and the same is hereby legalized.

Drafts on indigent fund.

2. That the county superintendents of free schools are hereby required to ascertain, so soon as possible after the passage of this act, the amount of indigent fund remaining in the hands of the late county

superintendents of schools, and to issue warrants for the payment of the same into the county treasury for the use of free schools.

Suits for indigent fund.

3. That the county superintendents of free schools be and are hereby required to institute suits for the recovery of such indigent funds as may remain unpaid on the first day of July, eighteen hundred and sixty-six.

Duty of county treasurer.

4. That the county treasurer is hereby required to pay on the warrant of the county superintendent of free schools of his county, out of the funds coming into his hands by this act, all claims which should have been paid under the law for the tuition of indigent children, and the county treasurer is hereby required to audit and settle all accounts of the late superintendents of schools pertaining to the indigent fund.

CHAP. 3.—An ACT amending Section 44 of Chapter 100, of the Acts of 1863.

Passed January 29th, 1866.

Be it enacted by the Legislature of West Virginia:

That section forty-four of chapter one hundred of the acts of eighteen hundred and sixty-three, is hereby amended and re-enacted, so as to read as follows:

Vacancy in office of Judge, &c.

Appointments to fill same.

"44. When any vacancy exists in the office of judge of the supreme court of appeals, or of any circuit, or secretary of the state, auditor, treasurer, or attorney general, the governor shall fill such vacancy by temporary appointment, which appointment shall continue until the same be filled by an election to fill the same at the next general October election after such vacancy accrues, and until such person so elected shall be duly qualified therein. But if the regular term of the office, which is vacant, expires on the last day of December, or on the third day of March next following the first general October election, which comes after the vacancy exists, then the appointment shall be for the unexpired term. The bond, if any be required by law, to be given by the officer so temporarily appointed, shall be in such penalty as the governor may direct. When a vacancy, in any of the offices above named, is to be filled by election by the people, the governor shall give notice thereof by proclamation a reasonable time before the election day. And if there be any vacancy in the representation from this state in the congress of the United States, the governor shall within ten days after the fact comes to his knowledge, give notice thereof by proclamation, to be published in such newspapers in the district where such vacancy may occur, as he may deem best calculated to give information thereof to the voters of such district, and in such proclamation he shall appoint some day, not over sixty, nor less than thirty days from the date thereof, for holding the election to fill such vacancy, which election shall be held accordingly; and the governor shall issue writs of election, directed to the sheriff of the counties included in the said congressional district, and the sheriffs, on the

Vacancy in congress.

receipt of the same, shall give notice to the supervisors and inspectors of elections of the several townships of his county."

CHAP. 4.—An ACT to extend the time allowed the Civil Officers of the counties of Pendleton, Hardy and McDowell, in which to qualify and give bond.

Passed January 30, 1866.

Be it enacted by the Legislature of West Virginia:

All the county and township officers who were elected on the twenty-sixth day of October, eighteen hundred and sixty-five, in and for the counties of Pendleton, Hardy and McDowell, shall be allowed until the first day of April, eighteen hundred and sixty-six, to qualify and execute their official bonds.

Allowed till April 1, 1866.

CHAP. 5.—An ACT for the relief of James A. Ewing.

Passed January 31, 1866.

Be it enacted by the Legislature of West Virginia:

The board of supervisors of Wood county are hereby authorized to pay to James A. Ewing, out of the school fund, by order on the treasurer thereof, such allowance as justice may require, for services rendered as county superintendent of free schools for said county.

Payment for services as county superintendent.

CHAP. 6.—An ACT to authorize the release of Mortgages, Deeds of Trust and other recorded liens.

Passed February 1, 1866.

Be it enacted by the Legislature of West Virginia:

1. The word "lien," as used in this act, shall be held to apply to mortgages, deeds of trust to secure the payment of money or for other purposes, conveyances reserving liens for purchase money; judgments, lis pendens, and attachments docketed or recorded pursuant to the third, fourth and fifth sections of chapter one hundred and eighty-six of the code of Virginia, second edition; and mechanics' liens under the second section of chapter one hundred and nineteen of the said code, or under any special act authorizing or regulating mechanics' liens. And the word "lienor" to apply to the person, (not being a married woman, or otherwise incapable in law of executing a valid release,) entitled to the benefit of such lien, or the money secured or intended to be secured thereby.

Construction of the words "lien" and "lienor."

2. The lienor may release any lien, to the benefit of which he is entitled, by a release signed by him, acknowledged by him before the recorder of the proper county, or any person authorized by law to take acknowledgments of deeds, and admitted to record as hereinafter provided; but nothing contained in this act shall be construed to authorize the release or discharge of any lien contrary to the pro-

How lien may be released.

Proviso.

visions of the instrument under which the lienor claims his right, or when it is provided in such instrument that the person, for whose benefit it is intended, shall not release or discharge the same.

When release sufficient.

3. The release shall be deemed sufficient if it describe the lien to be released by any words that will identify the same, and show an intent on the part of the lienor that such lien should be thereby released, discharged or deemed satisfied; and be signed, acknowledged and admitted to record as aforesaid.

4. It may be in form or substance as follows:

Form of release of mortgage or deed of trust.

I. If it be intended to release a mortgage or deed of trust: I, A. B., hereby release a mortgage, (or, deed of trust,) made by C. D. to me, (or, to E. F., my trustee,) dated the —— day of ——, and recorded in the recorder's office of —— county, West Virginia, in deed book ——, page ——, (to be signed) A. B. Acknowledged before the subscriber, this —— day of ——, (to be signed) G. H., justice, (or recorder, notary public, &c., as the fact may be.)

Of purchase money reserved.

II. If it be intended to release a lien for purchase money reserved in a conveyance: I, A. B., hereby release the right reserved to me in a conveyance executed by me, (or, myself and wife,) to C. D., dated the —— day of —— (and so forth, as in the preceding form.)

Of judgment.

III. If it be intended to release a judgment or decree: I, A. B., hereby release a judgment (or decree,) in my favor, (or in favor of J. K., which has been assigned to me, or in favor of J. K. for my use,) against C. D. for (stating the amount,) with interest and costs, rendered by (stating the court or justice by whom it was rendered, and the date when, or the term at which it was rendered, to be signed and acknowledged as above.)

Acknowledgment of release.

When lien extinguished.

5. The release shall be signed by the lienor, personal representative or guardian, and be acknowledged before the recorder, in whose office the lien thereby released is recorded or docketed, or before any person authorized to take acknowledgments of deeds, and such acknowledgment may be certified in the form or to the effect above set forth, and from the time the said release is left for record with the recorder in whose office the lien thereby released is recorded or docketed, (which time the recorder shall note by endorsement thereon,) the said lien shall be deemed extinguished, and the estate, real or personal, legal or equitable, conveyed, transferred, reserved or bound in any wise by such lien, whether vested in the lienor or a trustee for him, to be restored to the former owner and those claiming under him, to the same extent and effect as if such lien had never existed.

Duty of recorder.

6. The releases left with him for record, and deeds of release admitted in his office to record, shall be recorded by the recorder in a well-bound book, kept for that purpose exclusively, to which he shall make and keep proper indexes. Whenever any release or deed of release is recorded in the said book, the recorder shall note the same, with a reference to the book and page where it is recorded, on the margin of the record or docket of the lien released thereby.

7. For recording, indexing and noting any release as aforesaid, the recorder may charge a fee of fifty cents. Recorder's fee.

8. Upon request by the party entitled to such release, of the party entitled to make the same, and upon refusal of such party to enter such release, and upon reasonable notice thereof to such party so refusing, any court having jurisdiction may order and direct the same to be done by the recorder, at the cost of the party so refusing, for which service and all other entries so directed to be made by the said recorder, he shall for each of such entries be entitled to receive fifty cents. Court may order release.

9. Nothing in this act shall be deemed to affect or impair the validity of any deed of release or other writing discharging any lien herein mentioned, heretofore or hereafter made. Other releases valid.

CHAP. 7.—An ACT establishing the county of Mineral out of a part of the county of Hampshire.

Passed February 1, 1866.

Be it enacted by the Legislature of West Virginia:

1. So much of the county of Hampshire as is included within the following boundary lines, to-wit: Beginning at the point where the dividing line between the county of Hardy and the said county of Hampshire intersects the line between this state and the state of Maryland, thence running with said line between said counties of Hardy and Hampshire, crossing Patterson's creek to the dividing line between the townships of Welton and Romney, in the said county of Hampshire, on the top of Middle Ridge, thence along the top of Middle Ridge and with the said line between the townships of Welton and Romney, to the dividing line between the townships of Frankfort and Springfield in the said county of Hampshire; thence along the top of said Middle Ridge and with said line between the said townships of Frankfort and Springfield to the Maryland line, thence with the dividing line between this state and the state of Maryland to the place of beginning, shall form one distinct and new county, which shall be called and known by the name of Mineral county. Boundaries of Mineral county.

2. All township officers within the bounds of the said new county, at the date of the passage of this act, shall remain in office for and during the terms for which they have been elected, and until their successors shall be elected and qualified according to law. The supervisors of the several townships within the said new county in office as aforesaid, shall constitute the board of supervisors of the said county of Mineral until their successors are elected and qualified as aforesaid, and shall have all the powers and perform all the duties, vested in and imposed by law upon other boards of supervisors. Township officers. Board of supervisors.

3. The county seat of said new county shall be at the village of New Creek, situated on the Baltimore and Ohio railroad, and the County seat.

board of supervisors of said new county shall proceed as soon as practicable after the passage of this act to provide a suitable court house and other public buildings for the said county, in the manner required by the seventh section of the act passed October twenty-first, eighteen hundred and sixty-three, entitled "An Act defining in part, the powers and duties of the several counties of the state."

County officers.

4. The judge of the circuit court of the said new county shall as soon after the passage of this act as practicable, appoint a clerk for said court, and a prosecuting attorney and sheriff for said county, who shall hold their office until the first day of January, eighteen hundred and sixty-seven, and until their successors shall be elected and qualified according to law.

Judicial circuit, &c.

5. The said new county shall be attached to the same judicial circuit, and to the same congressional and senatorial districts with the said county of Hampshire.

Delegate.

6. The said new county and the said county of Hampshire shall each elect one delegate to the house of delegates, until a new apportionment of representation therein shall be made as provided in the constitution of this state.

Execution of process, &c.

7. All process issued in the said county of Hampshire before the organization of the said new county, and all public dues and officers' fees which may remain unpaid by the citizens of the said new county, shall be executed, returned, collected and accounted for, by the sheriff or other officer in whose hands the same may have been placed, in the same manner as if this act had not been passed.

Jurisdiction of Hampshire courts.

8. The courts of the said county of Hampshire shall retain jurisdiction over all actions, suits and proceedings herein pending at the passage of this act, and shall try and determine the same, and award execution or other process thereon, except in cases in which both parties reside in the said new county, which last mentioned cases, together with the papers and a transcript of the record of the proceedings therein had, shall, after that day, if either party so desire, be removed to the courts of the said new county, and there tried and determined as other cases.

Townships.

9. The board of supervisors of said new county may create an additional number of townships therein, not exceeding four, without submitting their action in the matter to a vote of the people. The said board may also provide a place for holding the courts of said new county in the town of Piedmont, until the completion of the court house at New Creek.

CHAP. 8.—An ACT to amend and re-enact Section 16 of Chapter 184, Code of Virginia, second edition.

Passed February 1, 1866.

Be it enacted by the Legislature of West Virginia:

The sixteenth section of chapter one hundred and eighty-four, code of Virginia, second edition, is hereby amended and re-enacted so as to read as follows:

"16. No clerk or recorder shall charge for taking bond from, administering oaths to or copying orders as to the recommendation, appointment or qualification of any justice, or of any sheriff, sergeant, coroner, assessor or surveyor, or for a deputy or assistant of either of them, or of any escheator, constable, militia officer or overseer of the poor, nor for making or copying orders as to binding out poor children, or as to county levies, or grand juries, and administering the necessary oaths."

Clerk or recorder not to charge for certain services.

CHAP. 9.—An ACT to amend an Act entitled "An Act creating a Board for the examination of certain Military Claims," passed February 25, 1865.

Passed February 1, 1866.

Be it enacted by the Legislature of West Virginia:

Section six of an act entitled "An Act creating a board for the examination of certain military claims," passed February twenty-fifth, eighteen hundred and sixty-five, is amended and re-enacted so as to read as follows:

"6. The governor shall annually, and at any time during its session, transmit to the legislature the report of the said board in order that provision may be made for the payment of said claims."

Annual reports.

CHAP. 10.—An ACT to amend and re-enact Section 64 of Chapter 100, of the acts of 1863.

Passed February 1, 1866.

Be it enacted by the Legislature of West Virginia:

Section sixty-four of chapter one hundred, of the acts of eighteen hundred and sixty-three is hereby amended and re-enacted so as to read as follows:

"64. Every place at which intoxicating liquors are sold, shall be kept closed on the day preceding and on the day of election, and if any person, whether licensed to sell intoxicating liquors or not, sell, or offer or expose for sale any such liquors, or keep open any distillery, bar, office, stall or room in his possession or under his control at which such liquors had usually been sold or shall at any other place sell or permit any person to drink any intoxicating liquor at the same on the day preceding or day of election, he shall forfeit not

Places for sale of liquors to be closed on election days.

Penalty.

Penalty for drunkenness on election days.

less than fifty nor more than one hundred dollars for every such offense. If any person be seen drunk at a place of holding any election on an election day, he shall be fined not less than ten nor more than fifty dollars, and in default of giving security for his good behavior for six months, be imprisoned for not less than five nor more than twenty days."

CHAP. 11.—An ACT to amend the Charter of the town of Clarksburg.

Passed February 2, 1866.

Be it enacted by the Legislature of West Virginia:

The charter of the town of Clarksburg is amended and re-enacted so as to read as follows:

Corporate limits.

1. The corporate limits and boundaries of the town of Clarksburg shall be as follows: Beginning at the mouth of Elk creek, where it enters the West Fork river, thence up said creek to the mouth of Gregory's run, thence up said run to the Northwestern Virginia railroad, thence in a direct line to a point near Clemens' Rock, thence with the ridge between said run and Elk creek to Pinnickinnick, thence in a direct line to the Still House run, where the Northwestern Virginia railroad crosses said run, thence with the meanderings of said run to Elk creek, thence with said creek and its meanderings to the mouth of the drain from Monticello spring, thence a due west line to the West Fork river, thence down said river to the beginning.

Power of corporation

2. The corporation shall have power within said limits to open alleys and streets, and to widen old alleys and streets if it be necessary for the welfare and convenience of said town.

CHAP. 12.—An ACT to protect State and local bounties for volunteers in the service of the United States and of this State, against attachment and levy for debt.

Passed February 3, 1866.

Be it enacted by the Legislature of West Virginia:

Bounties not liable for debts.

No bounty heretofore provided by this state, or any county, township or other organization thereof, for soldiers who volunteered in the service of the United States or of this state, nor any security for such bounty, shall be, in any way, liable to attachment or other process for the payment of any debt, claim or contract made by, or arising against the soldier for whom such bounty may have been provided previous to his enlistment.

Proviso.

Provided, this act shall not affect any contract made by such soldier providing for the support or protection of his family or others dependent on him for support during his term of service.

CHAP. 13.—An ACT to authorize the sale of a lot in or near the town of Martinsburg.

Passed February 5, 1866.

Preamble

Whereas, Adam Stephens, the original proprietor of the land upon which the town of Martinsburg, in the county of Berkeley, was established, granted to the inhabitants of said town a lot situated in or near said town for school purposes; and whereas, by reason of its proximity to the Baltimore and Ohio Railroad it has become unsuitable as a site for a public school, and for many years has been abandoned as such: Therefore,

Be it enacted by the Legislature of West Virginia:

Sale.

The mayor and common council of said town are hereby authorized to make sale of said lot, at public or private sale, as they may deem best for the interests of the inhabitants of said town, with full power to execute and deliver a deed for the same. The net proceeds of such sale shall be paid to the board of education of the township of Martinsburg, for the benefit of free schools in said township.

Proceeds

CHAP. 14.—An ACT to amend and re-enact the first section of an act entitled "An act providing for issuing grants for land in certain cases," passed December 9, 1863.

Passed February 5, 1866.

Be it enacted by the Legislature of West Virginia:

That the first section of an act entitled "an act providing for issuing grants for land in certain cases," passed the ninth day of December, eighteen hundred and sixty-three, shall be amended and re-enacted to read as follows:

Survey of entries made before June 20, 1863.

"1. All entries made before the twentieth day of June, eighteen hundred and sixty-three, under the provisions of chapter one hundred and twelve of the code of Virginia, second edition, which were in force on that day, and which have not heretofore been surveyed, shall be surveyed according to the provisions of said chapter of said code. All plats and certificates of such surveys, whether heretofore or hereafter made; plats and certificates of all other surveys in force on said twentieth day of June, eighteen hundred and sixty-three, and copies of all plats and certificates of surveys heretofore filed in the land office at Richmond, on which no grants have issued, and been delivered to the parties to whom issued, shall, before the ninth day of December, eighteen hundred and sixty-seven, be returned by those for whom the surveys are made, to the secretary of the state, and they may demand from him receipts for the same; and no grant shall issue for any land until the conditions imposed by section forty-three of the said chapter of the said code be complied with by the person applying for the grant."

Time for returning plats extended.

CHAP. 15.—An ACT to amend and re-enact section 36, chapter 176, Code of Virginia, second edition.

Passed February 5, 1866.

Be it enacted by the Legislature of West Virginia:

The thirty-sixth section of chapter one hundred and seventy-six, code of Virginia, second edition, is hereby amended and re-enacted so as to read as follows:

Witness fees.

"36. A person attending as a witness under a summons, shall have one dollar for each day's attendance, and five cents per mile for each mile necessarily traveled to the place of attendance, and the same for returning, besides the tolls at the bridges and ferries which he crosses or turnpike gates he may pass. On his oath, an entry of the sum he is entitled to, and for what, and by what party it is to be paid, shall be made, when the attendance is before either house or a committee of the legislature, by the clerk of such house or committee, and in other cases by the clerk of the court in which the case is, or the person before whom the witness attended. A witness summoned to attend in several cases, may have the entry made against either of the parties by whom he is summoned; but no witness shall be allowed his attendance in more than one case at the same time. This section shall not apply to witnesses before justices."

How entered.

Exception.

CHAP. 16.—An ACT amending the Charter of the town of Triadelphia, in the County of Ohio.

Passed February 8, 1866.

Be it enacted by the Legislature of West Virginia:

Section eight of chapter one hundred and eighty-one of the acts of the general assembly of Virginia, eighteen hundred and forty, is hereby amended and re-enacted so as to read as follows:

Powers of common council.

"8. The common council of the town of Triadelphia shall have power to erect a town hall, a market house, a work house, a jail, a watch house, and other buildings deemed necessary for the convenience or benefit of said town; to establish and organize fire companies, and purchase engines; to regulate and graduate the streets and alleys, and to pave the same if deemed necessary; to cause the footways or sidewalks to be paved at the expense of the owners or occupiers of the lot or parts of lots; and in case they, or any of them, shall neglect or refuse to pave the same when required, it shall be lawful for the common council to cause the same to be paved, and to recover the expense or cost thereof before any justice of Triadelphia township; provided, that such expense or cost shall not exceed the sum of twenty dollars for any one lot or part of a lot. And in all cases where the tenant shall be required to pave the footway or sidewalk in front of the property in his or her occupation, the expense or cost of such pavement paid by him, her or them, shall be a good and valid set-off against so much of the rent due, or to become due for the tenement or the property occupied; to prevent the firing of guns and running horses or any other animals of their kind in said town; to license and regulate shows and other public exhibitions; to levy a fine on those who create a nuisance, public or private; to lay and collect taxes on the persons and property, real and personal, within the said town; provided, that the same shall not exceed five per centum on the yearly rent or value of the real property in any one year, and fifty cents on each tithable person; to appoint all such officers as shall be necessary for conducting the affairs of said corporation, not otherwise provided for by this act, and to allow them such compensation as they may deem necessary and proper, and not contrary to the constitution or laws of this state, or of the United States; and to enforce the observance thereof by fines and penalties, not exceeding for any one offense the sum of ten dollars, recoverable with costs before the mayor or recorder of said town, or before any justice of Triadelphia township, for the use of said town."

CHAP. 17.—An ACT appropriating six hundred dollars to Wm. Alexander.

Passed February 8, 1866.

Be it enacted by the Legislature of West Virginia:

Appropriation to Wm. Alexander.

That the sum of six hundred dollars is hereby appropriated, to be paid to William Alexander, to replace the same amount which was lost by him while in the discharge of his duties, in bringing home the money belonging to the soldiers of this state.

CHAP. 18.—An ACT to enable the Council of the city of Parkersburg to change the names of the streets thereof.

Passed February 10, 1866.

Be it enacted by the Legislature of West Virginia:

Names of streets in Parkersburg.

That the mayor and city council of the city of Parkersburg, at the first meeting thereof in the month of April, eighteen hundred and sixty six, are hereby authorized and empowered to change the names of any, or all the streets in said city, and substitute such names as they may deem proper, and that the names so substituted shall be legally held as the names of said streets, after the publication thereof.

CHAP. 19—An ACT making an appropriation to the West Virginia Hospital for the Insane.

Passed February 10, 1866.

Be it enacted by the Legislature of West Virginia:

Appropriation.

The sum of three thousand dollars is hereby appropriated, to be applied to the payment of the current expenses of the West Virginia hospital for the insane, for the year eighteen hundred and sixty-six. And the same shall be paid by the auditor on the draft of the treasurer

How paid.

of said hospital, endorsed by the president of the board of directors thereof; anything in the eighty-fifth chapter of the code of Virginia, second edition, notwithstanding.

CHAP. 20.—An ACT for the relief of William E. Lyon.

Passed February 12, 1866.

Be it enacted by the Legislature of West Virginia:

Erection of dam authorized.

1. It shall be lawful for William E. Lyon, his heirs or assigns, to erect and continue a mill dam across Ten Mile creek, on his land in Harrison county, at or near where a dam was erected by Charles Gain, which dam was erected by the authority of the county court of Harrison county, under its order made on the ninth day of September, eighteen hundred and fifty-two, which order was made upon the return of a jury of inquest, in pursuance of a writ of *ad quod damnum*, sued out of the clerk's office of said court at the instance of said Gain. The said dam shall be, in all respects, like the one which the said Gain was allowed to erect, under the said order.

2. Nothing in this act shall be so construed as to authorize said Lyon, or any person under him, to obstruct the navigation, or the passage of fish, to a greater extent than the same was obstructed by the former dam, erected by said Gain.

CHAP. 21.—An ACT to regulate the salary of the reporter of the Supreme Court of Appeals.

Passed February 12, 1866.

Be it enacted by the Legislature of West Virginia:

Salary fixed.

The reporter for the supreme court of appeals shall receive one thousand dollars annually, after the first day of January, eighteen hundred and sixty-six, to be paid quarterly, out of the treasury of the state, as other salaries are paid.

CHAP. 22.—An ACT to incorporate the Wheeling Iron Works and Glenn's Run Turnpike Company.

Passed February 12, 1866.

Be it enacted by the Legislature of West Virginia:

Capital stock.

1. It shall be lawful to open books for receiving subscriptions to an amount not exceeding fifteen thousand dollars, divided into shares of twenty-five dollars each, to constitute a joint capital stock for constructing a turnpike road from the Wheeling Iron Works, north of the city of Wheeling, to Glenn's Run, in Ohio county and state of West Virginia, to be located on or near the track of the road surveyed by order of the said Ohio county, through the lands of the late Andrew P. Woods and others, and on record in the said county, by and with the consent of the supervisors of the said county. The said books shall

Location of road

be opened under the direction of Robert Crangle, George T. Tingle, Joseph Bell, Alexander M. Jacob and David Garden, or any two of them, for the purpose of receiving subscriptions, and when two thousand dollars shall have been subscribed by responsible persons, *bona fide*, then the said subscribers shall be incorporated by the name of the Wheeling Iron Works and Glenn's Run turnpike company. **Corporators.**

2. Said turnpike road shall be opened not less than twenty-seven feet wide: provided, the said company shall not be compelled to pave or gravel the side-walks of the said road, and said company may cover the said road with such material as may be ordered by the directors of the same; but said corporation shall be subject to the provisions of the code in relation to turnpike companies. **Width of road.**

3. The said corporation shall elect a board of directors for the management of the affairs of the said road, and make such by-laws and regulations as may be necessary for the government of the same. **Directors.**

4. The said corporation may erect a gate on said road, one mile above the ferry known as the Martinsville ferry, and may charge and collect tolls thereon allowed by law, and said tolls shall be applied first to keeping the road in good repair, before any dividend shall be made to the stockholders. **Tollgate.**

CHAP. 23.—An ACT to alter the terms of the Circuit Courts in the Ninth Circuit.

Passed February 12, 1866.

Be it enacted by the Legislature of West Virginia:

The commencement of the terms of the circuit courts in the several counties of the ninth circuit, instead of being as heretofore prescribed by law, shall be as follows:

For the county of Pocahontas, on the first day of April, June, September and November. **Pocahontas.**

For the county of Greenbrier, on the eighth day of April, June, September and November. **Greenbrier.**

For the county of Monroe, on the nineteenth day of April, June, September and November. **Monroe.**

For the county of Mercer, on the first day of March, May, October and December. **Mercer.**

For the county of McDowell, on the eighth day of March, May, October and December. **McDowell.**

CHAP. 24.—An ACT to legalize marriages celebrated during the rebellion.

Passed February 12, 1866.

Be it enacted by the Legislature of West Virginia:

No marriage celebrated within the limits of this state between the seventeenth day of April, eighteen hundred and sixty-one, and the first day of January, eighteen hundred and sixty-six, shall be void by **Marriages without license legalized.**

reason of the same having been solemnized without the license required by section seven, chapter one hundred and eight, of the code of Virginia, second edition.

CHAP. 25.—An ACT to repeal the acts giving the Courts of Doddridge and Ritchie jurisdiction in cases arising in Gilmer or Calhoun.

Passed February 13, 1866.

Be it enacted by the Legislature of West Virginia:

Calhoun and Ritchie.

The act passed August fifth, eighteen hundred and sixty-three, entitled "An act to authorize suits in Ritchie county in cases heretofore cognizable in the courts of Calhoun county," and so much of the act passed October fifteenth, eighteen hundred and sixty-three, entitled "An act to authorize suits to be brought in the county of Kanawha, Lewis, Doddridge or Jackson in cases heretofore cognizable in certain other counties," as authorizes suits to be brought in Doddridge county against persons in Gilmer county, are hereby repealed.

Gilmer and Doddridge.

CHAP. 26.—An ACT to amend Section 34, of Chapter 118, of the Acts of 1863.

Passed February 13, 1866.

Be it enacted by the Legislature of West Virginia:

Section thirty-four of chapter one hundred and eighteen of the acts of eighteen hundred and sixty-three, is amended and re-enacted so as to read as follows:

Assessment of buildings.

"34. When any building which may have been assessed shall become reduced in value one hundred dollars or more, the assessor shall deduct the amount of such reduction from the value of the building assessed against the owner, and where any building shall be either wholly destroyed or reduced to less than one hundred dollars in value, the assessor shall deduct from said assessment the amount for which such building was assessed. If the owner of any building so assessed shall feel himself aggrieved thereby, he may within twelve months after such assessment, apply to the board of supervisors of his county to have the same corrected, but he shall, before such application is made, give notice thereof in writing, to the prosecuting attorney, whose duty it shall be to attend to the interests of the state and county therein. A copy of all orders made by the board of supervisors changing the assessed value of any real estate shall be certified by the clerk of such board to the auditor and the assessor in whose district such real estate is situated. For any failure on the part of the assessor to comply with this or any of the three next preceding sections he shall forfeit fifty dollars."

When reduced.

How corrected.

Penalty.

CHAP. 27.—An ACT prescribing how the general School Fund shall be apportioned to certain Counties in the year 1866.

Passed February 13, 1866.

Be it enacted by the Legislature of West Virginia:

1. The auditor, in the next apportionment of the general school fund, shall apportion to the counties of Putnam, Pleasants, Wirt, Wood, Monongalia, Randolph, and Gilmer, in addition to their share of such fund this year, such portion thereof as they would have been entitled to receive in the year eighteen hundred and sixty-five, had they then made full returns of the number of school children in their respective counties. Such apportionment shall be made upon the enrollment of the present year. Counties named. Basis of apportionment.

2. The superintendents of the counties aforesaid are hereby required to apportion to such townships in their counties, in addition to their share of the school fund this year, such portion as they would have been entitled to receive in eighteen hundred and sixty-five, had they made return according to law. Duty of county superintendents.

CHAP. 28.—An ACT amending Section 94, Chapter 118, of the Acts of 1863.

Passed February 14, 1866.

Be it enacted by the Legislature of West Virginia:

That section ninety-four of an act entitled "an act to provide for the assessment of taxes," passed December third, eighteen hundred and sixty-three, be amended and re-enacted so as to read as follows:

"94. Every assessor shall be entitled to receive in consideration of his services, to be paid out of the county treasury as other claims against the county are paid, a commission of three per centum on the amount of taxes lawfully assessed by him on persons and property within the preceding twelve months. But where taxes on persons and property assessed in any district in a county exceed twenty thousand dollars, the commission allowed on the excess shall be two per centum, and where the said taxes assessed in any district in a city or town exceed sixteen thousand dollars, the commission allowed on the excess shall be one and one-half per centum." Assessors' commissions.

CHAP. 29.—An ACT establishing the County of Grant out of a part of the County of Hardy.

Passed February 14, 1866.

Be it enacted by the Legislature of West Virginia:

1. So much of the county of Hardy as is included within the following boundary lines, to-wit: Beginning at Fairfax Stone, at the junction of the line between West Virginia and Maryland, corner to Boundaries of Grant county.

said county of Hardy, and with the said boundary line down the north branch of the Potomac to the Hampshire (now Mineral) and Hardy county line; then with the said line southeastward crossing Patterson's creek mountain, and thence running the division line between the proposed new county and Hardy county, southward along the top of mountain to the gap below the mouth of Luney's creek, thence with a straight line to the top of Elkhorn Rock, thence along the top of the mountain range which divides the waters of south Mill creek from those of the South Fork to the Hardy and Pendleton county line, thence with the latter northwestward to the Hardy and Tucker county lines, and with latter to the beginning, shall form one district and new county, which shall be called and known by the name of Grant county.

Township officers.

2. All township officers within the bounds of the said new county, at the date of the passage of this act, shall remain in office for and during the terms for which they have been elected, and until their successors shall be elected and qualified according to law. The supervisors of the several townships within the said new county, in office as aforesaid, shall constitute the board of supervisors of the said county of Grant until their successors are elected and qualified as aforesaid, and shall have all the powers and perform all the duties vested in and imposed by law upon other boards of supervisors.

Board of supervisors.

County seat.

3. The county seat of the said new county shall be at or near John May's, on the north fork of Luney's creek, and the board of supervisors of said new county shall proceed as soon as practicable after the passage of this act, to provide a suitable court house and other public buildings for the said county in the manner required by the seventh section of the act passed October twenty-first, eighteen hundred and sixty-three, entitled "an act defining in part the powers and duties of the several counties of the state."

County officers.

4. The judge of the circuit court of the said new county shall as soon after the passage of this act as practicable, appoint a clerk for the said court, and a prosecuting attorney and sheriff for said county, who shall hold their offices until the first day of January, eighteen hundred and sixty-seven, and until their successors shall be elected and qualified according to law.

Judicial circuit, &c.

5. The said new county shall be attached to the same judicial circuit and the same congressional and senatorial districts with the said county of Hardy.

Delegate.

6. The said new county and the said county of Hardy shall together form the seventh delegate district, and elect one delegate to the house of delegates, until a new apportionment of representation therein shall be made, as provided in the constitution of this state.

Execution of process, &c.

7. All process issued in the said county of Hardy before the organization of the said new county, and all public dues and officers' fees which may remain unpaid by the citizens of the said new county,

shall be executed, returned, collected and accounted for by the sheriff or other officer in whose hands the same may have been placed, in the same manner as if this act had not been passed.

Jurisdiction of Hardy courts.

8. The courts of the said county of Hardy shall retain jurisdiction over all actions, suits and proceedings therein pending at the passage of this act, and shall try and determine the same, and award execution or other process thereon, except in cases in which both parties reside in the said new county, which last mentioned cases, together with the papers and transcript of the record of the proceedings therein had, shall after that day, if either party so desire, be removed to the courts of the said new county, and there tried and determined as other cases.

CHAP. 30.—An ACT in relation to the oaths of Attorneys at Law.

Passed February 14, 1866.

Be it enacted by the Legislature of West Virginia:

No attorney at law shall be allowed to practice in any court, or before any justice or board of supervisors, of this state, after the passage of this act, until he shall take, in the court in which he proposes to practice, in addition to the oaths now required by law, the following oath:

Oath.

"I, (A. B.,) do solemnly swear that I have not, since the twentieth day of June, eighteen hundred and sixty-three, borne arms against the United States, nor against the state of West Virginia; that I have voluntarily given no aid or comfort to persons engaged in armed hostility thereto, by countenancing, counseling or encouraging them in the same; that I have not sought, accepted nor attempted to exercise the functions of any office whatever under any authority in hostility to the United States or to the state of West Virginia; that I have not yielded a voluntary support to any pretended government, authority, power or constitution within the United States, hostile or inimical thereto; and that I take this obligation freely, without any mental reservation or purpose of evasion."

CHAP. 31.—An ACT securing Liens to Mechanics, Laborers and others.

Passed February 15, 1866.

Be it enacted by the Legislature of West Virginia:

Who shall have lien.

1. That every mechanic, builder, artisan, workman, laborer or other person, who shall do or perform any work or labor upon, or furnish any material, machinery or fixtures for any building, erection or other improvement upon land, including contractors, subcontractors, material furnishers, mechanics and laborers engaged in the construction of any railroad, or other work of internal improve-

ment, or for the work or labor done on any steamboat, or other water craft, or materials furnished for the same, or for the repairing of the same, under and by virtue of any contract with the owner or proprietor thereof, his agent, trustee, contractor or sub-contractor, upon complying with the provisions of this act, shall have for his work or labor done, or materials, machinery or fixtures furnished, a lien upon such building, erection or improvement, and upon the land belonging to such owner or proprietor on which the same is situated, to secure the payment of such work or labor done, or materials, machinery or fixtures furnished.

How sub-contractor may obtain lien.

2. Every sub-contractor, wishing to avail himself of the benefits of this act, shall give notice to the owner or proprietor, or his agent or trustee, before or at the time he furnishes any of the material aforesaid, or performs any of the labor, of his intention to furnish or perform the same, and the probable value thereof; and if afterwards the materials are furnished, or labor done, the sub-contractor shall settle with the contractor therefor, and having made the settlement in writing, the same signed by the contractor and certified by him to be just, shall be presented to the owner or proprietor, or his agent or his trustees, and left with him, and within thirty days from the time the materials shall have been furnished, or the labor performed, the sub-contractor shall file with the recorder of the county in which the building, erection, boat, water craft or other improvement is situated, a copy of the settlement between him and the contractor, which shall be a lien on the building, erection, boat, water craft or other improvement, for which the materials were furnished, or for which the labor was performed, and shall at the same time file a correct description of the property to be charged with the lien, the correctness of which shall be verified by affidavit.

Copy of settlement with contractor to be filed.

3. If the contractor shall for any reason fail or refuse to make and sign such settlement in writing with the sub-contractor, when the same is demanded, then the sub-contractor shall make a just and true statement of the work and labor done, or materials furnished by him, giving all credits, which he shall present to the owner or proprietor, or his agent or trustee, and shall also, within thirty days, file a copy of the same, verified by affidavit, with the recorder of the county in which the building, erection, boat or other improvement may be situated, together with a correct description of the property to be charged with the lien.

Refusal of contractor to settle.

4. The certificate of settlement made as aforesaid, or the statement of the sub-contractor, shall be a justification to the employer in withholding from the contractor the amount appearing thereby to be due to the sub-contractor, until he is satisfied that the same has been paid, and the employer shall become the surety of the contractor to the sub-contractor for the amount due for such work and labor or materials furnished, not, however, exceeding the value thereof, as notified under section second.

Employer the surety of the contractor.

5. The notices mentioned shall be served as other notices are directed to be served. Notices.

6. It shall be the duty of every person, except as has been provided for sub-contractors, who wishes to avail himself of the provisions of this act, to file with the recorder of the county in which the building, erection, or other improvement to be charged with lien is situated, and within ninety days after the materials aforesaid shall have been furnished, or the work and labor done or performed, a just and true account of the demand due or owing to him, after allowing all credits, and containing a correct description of the property to be charged with said lien, and testified by affidavit. How others may obtain lien.

7. It shall be the duty of the recorder of the county to endorse upon every account the date of filing, and record the same in a book by him to be kept for that purpose, to be called "the mechanics' lien record," properly indexed, and he shall state the time of the filing of the same, the description of the property to be charged by the said lien, and shall, when duly required, enter satisfaction on the same, for which said recorder shall receive in each case the sum of one dollar, to be paid by the person imposing the lien, which shall be taxed and collected as other costs, in case there be a suit thereon. Duty of recorder. Fee.

8. Where there are several contractors under the same employer, for the building or erection, or other improvement, or for work or labor, or for materials furnished for the same erection or improvement, where the work, labor and materials are necessary towards the completion of the same, the said several lienors shall have no priority of lien for such work and labor or materials furnished, and if the said structure and the ground on which the same is situated, be not sufficient to pay the expense of the whole structure, the said laborers and material men shall be paid *pro rata*. No priority of lien.

9. The entire land upon which any such building, erection or other improvement is situated, including as well that part of said land which is not covered with such building, erection or other improvement, shall be subject to all liens created by this act, to the extent, and only to the extent, of all the right, title and interest, owned therein by the owner or proprietor of such building, erection or other improvement, for whose immediate use or benefit such labor was done, or materials were furnished; and when the interest owned in said land, by such owner or proprietor of such building, erection or other improvement is only lease-hold interest, the forfeiture of such lease for the non-payment of rent, or for non-compliance with any other stipulations therein, shall not forfeit or impair such liens, so far as it concerns the building, erection and improvement thereon, put by such owner or proprietor, charged with such lien, but such building, erection or improvement may be sold to satisfy such lien, and be moved within thirty days after such sale by the undertaker. How far land subject to mechanic's lien.

10. The lien for materials aforesaid, or work, shall attach to the building, erection or improvement, for which they were furnished, or

Mechanic's lien on building preferred to lien on land.

the work was done, in preference to any prior lien or incumbrance, or mortgage or deed of trust, upon the land upon which said building, erection or improvement has been erected or put; and any person enforcing such lien, may have such building, erection or improvement sold, and the purchaser may remove the same within a reasonable time thereafter.

How lien may be enforced.

11. Any person having a lien under, or by virtue of this act, may file a bill in chancery to enforce the same; and any other person having a lien thereon, may file his petition in the said case and be made defendant therein, and make his claim in the same manner as though he had been plaintiff in the case, according to the practice in courts of chancery.

Death of parties to suit.

12. In case of death of any of the parties, whether before or after suit, the personal representative of such deceased party shall be made the plaintiff or defendant, as the case may require.

Who are sub-contractors.

13. All persons furnishing materials or doing work provided for by this act, shall be considered sub-contractors, except such as have contracted therefor singly with the owner, proprietor, his agent or trustee.

Lien not to exceed original contract.

14. Nothing herein contained shall be so construed as to give a sub-contractor or laborer a lien for any amount greater than that originally contracted for between the employer and contractor.

Persons taking collateral security not entitled to lien.

15. No person who shall take collateral security for the payment of the money for any structure, shall be entitled to the lien provided in this act, but the taking the note or bill of exchange of the party liable shall not be construed such security.

CHAP. 32.—An ACT permanently locating the county seat of Jefferson county at Shepherdstown.

Passed February 15, 1866.

Be it enacted by the Legislature of West Virginia:

The county seat of Jefferson county is hereby permanently located at Shepherdstown, in said county.

CHAP. 33.—An ACT to amend the 21st section of Chapter 131, of the acts of 1863.

Passed February 15, 1866

Be it enacted by the Legislature of West Virginia:

Section twenty-one of chapter one hundred and thirty-one, of the acts of eighteen hundred and sixty-three, is amended and re-enacted so as to read as follows:

"21. The list required by the fourteenth section of this act, to be made out by the sheriff or collector, shall not be allowed unless they

Regulations respecting delinquent lists.

have been first submitted to the assessor for the district to which they relate, or in case of his death or removal, to a commissioner to be appointed by the board of supervisors, and are accompanied by the written opinion of such assessor or commissioner touching the propriety of such lists and each case therein contained, verified by his oath. Copies of the second and third lists heretofore returned, and of the third list mentioned in the said section, when it shall hereafter be allowed, shall be placed by the auditor in the hands of any sheriff or collector of any county for collection, to be returned within one year thereafter, and accounted for as other assessed taxes, or if the auditor see fit he may place such copy in the hands of any constable or collector, who shall have the same power of distress as sheriff or collector, and shall account for the same in like manner, and he and his securities shall be subject to all such remedies as are given to the state against sheriffs for failure to pay; and his compensation shall not exceed twenty per centum of the amount collected and paid into the treasury."

CHAP. 34.—An ACT to protect literary societies and other meetings convened for social amusement.

Passed February 15, 1866.

Be it enacted by the Legislature of West Virginia:

Penalty for disturbing meetings.

That if any person or persons shall wilfully disturb, molest or interrupt any literary society, school or society formed for intellectual improvement, or any other school or society organized under the laws of this state, or any school, society or meeting formed or convened for improvement in music, either vocal or instrumental, or for any moral and social amusement, the person or persons so offending shall be deemed guilty of a misdemeanor, and, on conviction thereof before any justice of the township wherein the offence was committed, shall be fined in any sum not less than one nor more than ten dollars and costs, and on default of payment shall be imprisoned in the county jail not exceeding ten days, according to the aggravated nature of the offence.

CHAP. 35.—An ACT to change the number of Adelphi Lodge of the Independent Order of Odd Fellows, in the town of Clarksburg.

Passed February 15, 1866.

Be it enacted by the Legislature of West Virginia:

That the act passed April seventh, eighteen hundred and fifty-eight, by the general assembly of Virginia, entitled "an act to incorporate Adelphi Lodge number forty-seven, of the Independent order of Odd Fellows, in the town of Clarksburg," be so amended as to change the number of said Lodge from number forty-seven to number eight.

CHAP. 36.—An ACT to authorize the City Council of Parkersburg to change the location of one of its streets.

Passed February 15, 1866.

Be it enacted by the Legislature of West Virginia:

That the council of the city of Parkersburg be and the same is hereby authorized to change the location of so much of the northwestern turnpike as now extends from Julian street to Ann street, in said city, by discontinuing the same and substitute New street for that portion of said turnpike thus discontinued. But this change is not to take place until the consent of the owners of the property on the turnpike discontinued as aforesaid be obtained to the change thereof.

Proviso.

CHAP. 37.—An ACT extending the Charter of the White Sulphur and Sweet Springs Turnpike Road.

Passed February 16, 1866.

Be it enacted by the Legislature of West Virginia:

Extended ten years.

1. The charter of the White Sulphur and Sweet Springs Turnpike Road, in the county of Greenbrier, is hereby extended for the additional period of ten years, from and after the termination of the fifteen years extended for the benefit of William A. Mastin, by an act of the general assembly of Virginia, passed March ninth, eighteen hundred and forty-three, entitled "an act authorizing the reconstruction of Sweet Spring and White Sulphur Springs Turnpike Road."

When charter revoked.

2. If said road is allowed to dilapidate and continue out of repair for the space of six months, the said charter shall be deemed to be revoked.

CHAP. 38.—An ACT constituting a certain part of the bank of the Ohio River, within Jackson county, a lawful fence.

Passed February 16, 1866.

Be it enacted by the Legislature of West Virginia:

Part of bank specified.

1. So much of the bank of the Ohio river, within the county of Jackson, as is included within the following boundary, to wit: Beginning at Hezekiah Barnes' lower line, thence down said river to the mouth of Glade Run, is hereby declared to be a lawful fence.

2. All acts or parts of acts inconsistent herewith, are hereby repealed.

Commencement.

3. This act shall be and remain in force from and after the first day of June next.

CHAP. 39.—An ACT to prevent and punish the forcible or unlawful obstruction of public justice.

Passed February 17, 1866.

Be it enacted by the Legislature of West Virginia:

1. The circuit courts and the supreme court of appeals of West Virginia are alone authorized to interpret and determine the constitutionality of any act of the legislature of this state. Who to interpret acts.

2. No officer in the lawful exercise or discharge of his official duty under any act of the legislature, or any order or proclamation of the governor of this state, shall be deemed personally responsible therefor (either civilly or criminally) by reason of such act, order or proclamation being afterwards adjudged by any court of this state, to be unconstitutional and void. In what case officer not responsible.

3. Any officer of this state, whose duty it is to execute or enforce any act of the legislature or any legal process or proceeding arising thereunder, or any lawful order or proclamation of the governor of West Virginia, and who shall wilfully neglect or refuse to execute or enforce the same, shall, for every such offence, be deemed guilty of a misdemeanor, and, upon conviction thereof by a jury, shall be liable to a fine of not less than fifty nor more than five hundred dollars, and to imprisonment in the public jail of the county for not more than one year, at the discretion of the court. Neglect of duty by officer. Penalty.

4. Any person who by threats, menaces, or acts, or otherwise, shall forcibly or illegally hinder, obstruct or oppose, or attempt to obstruct or oppose, or shall counsel or advise others to hinder, obstruct or oppose any officer of this state (whether civil or military) in the lawful exercise or discharge of his official duty, shall for every such offense, be deemed guilty of a misdemeanor, and, on conviction thereof by a jury, shall be liable to a fine of not less than ten nor more than five hundred dollars. *Provided*, That nothing in this act shall be construed as impairing or affecting the right of any party, by proper legal process or proceeding, before any of said courts, or any judge thereof, to question or contest the validity or constitutionality of any act of the legislature, or any process, judgment or proceeding of any court, judge, or other officer of this state, or any order or proclamation of the governor. Resistance to officers. Penalty. Proviso.

CHAP. 40.—An ACT making an appropriation for the Antietam National Cemetery, near Sharpsburg, Maryland.

Passed February 17, 1866.

Be it enacted by the legislature of West Virginia:

1. The sum of sixteen hundred and seventy-two dollars and forty-four cents is hereby appropriated to aid in the purchase, permanent enclosure and adornment of the ground of the Antietam National Cemetery, near Sharpsburg, Maryland. Appropriation.

How paid. 2. The amount hereby appropriated shall be subject to the order of the governor, and the whole or any part thereof may be paid by him if required, for the purpose named in the first section of this act, to the treasurer of the Antietam National Cemetery.

CHAP. 41.—An ACT better to provide for the distribution of the Acts.

Passed February 17, 1866.

Be it enacted by the Legislature of West Virginia:

Recorder to forward list of officers to secretary of the state. 1. The recorder of each county shall, annually, within ten days after the qualification according to law of county and township officers, chosen at the regular elections, evidence of whose qualification is filed in his office, make and transmit to the secretary of the state a certified list of all such officers, setting forth the name and office of each, and the name of the township, in the case of a township office.

Acts to be forwarded to recorder. 2. The acts to which the officers within a county may be entitled shall be forwarded to the recorder thereof, and shall be delivered by him to the several officers entitled to them. The recorder may be required to receipt for said acts, and may require receipts from those to whom he delivers them.

Acts to be property of office. 3. All acts, codes, or other documents furnished to officers by authority of law, shall be the property of the office, and be delivered by each officer to his successor.

CHAP. 42.—An ACT to construct a mill dam across Elk river, at Sutton, Braxton county.

Passed February 17, 1866.

Be it enacted by the legislature of West Virginia:

Dam authorized. 1. Charles Frame and James A. Boggs are hereby permitted to construct a saw and grist mill dam, five feet high, across Elk river, at the town of Sutton, Braxton county, and to be restricted as follows: Restrictions. The slope in said dam to be not less than thirty feet wide and forty feet long, and the residue of the said dam to be six inches higher than the crest of the slope.

Damages. 2. The said Charles Frame and James A. Boggs, as well as their successors, shall be held responsible for any damages resulting from a failure to build said dam as directed in the first section of this act.

CHAP. 43.—An ACT for the relief of St. Clair Rains, of Kanawha County.

Passed February 17, 1866.

Be it enacted by the Legislature of West Virginia:

The auditor is hereby authorized to issue his warrant upon the treasury for one hundred and three dollars and eighty cents, in favor of St. Clair Rains, of Kanawha county, for services rendered and expenses incurred in arresting George W. Bragg and others, and conveying the same from Kanawha county to Cabell county, for trial.

Auditor to issue warrant.

CHAP. 44.—An ACT to repeal Sections 22 and 23 of Chapter 163 of the Code of Virginia, second edition.

Passed February 17. 1866.

Be it enacted by the Legislature of West Virginia:

Sections twenty-two and twenty-three of chapter one hundred and sixty-three of the code of Virginia, second edition, are hereby repealed.

CHAP. 45.—An ACT to provide a penitentiary for the State.

Passed February 19, 1866.

Be it enacted by the Legislature of West Virginia:

Duty of board of public works.

1. The board of public works is authorized and required to select and locate a site for a penitentiary in or near Moundsville, in the county of Marshall, and purchase ground for that purpose, in the name of the state, not less than ten acres.

Board of directors.

2. The said board of public works shall appoint a board of directors, consisting of five persons, a majority of whom shall be a quorum, who shall adopt such plan for laying out and enclosing said grounds, and for the erection of necessary buildings thereon, as to it shall seem best, and may appoint a superintendent over the same and order that the state convicts shall be placed at work thereon, under proper guards. The board of directors may direct the superintendent to employ such workmen as may be necessary to carry on the work. The compensation of the superintendent shall be fixed by the said board of directors.

Superintendent.

Reports of boards.

3. The said board of public works shall report its proceedings herein to the next session of the legislature, and the said board of directors shall, before the meeting of the next legislature, make a full report of its proceedings up to the first day of January next, to the governor, to be by him laid before the next legislature.

Pay of directors.

4. The directors shall receive each the sum of three dollars per day, and their necessary traveling expenses, for every day necessarily spent by them on the board of directors.

Appropriation.

5. The sum of fifty thousand dollars is hereby appropriated, out of any money in the treasury not otherwise appropriated, to the purposes of this act, on the order of the said board of directors.

CHAP. 46.—An ACT to ratify on certain terms, the act of the General Assembly of Virginia, passed February 3, 1866, relating to the Virginia Canal Company.

Passed February 20, 1866.

Be it enacted by the Legislature of West Virginia:

Assent to Virginia act.

1. The assent of the legislature of West Virginia is hereby given to the act of the general assembly of Virginia, passed February third, eighteen hundred and sixty-six, entitled "An act to amend and re-enact the act entitled 'An act to incorporate the Virginia Canal Company, and to transfer the rights and franchises of the James River and Kanawha company thereto,' passed March twenty-ninth, eighteen hundred and sixty-one," and the said Virginia Canal company, when organized pursuant to the above mentioned act of the general assembly of Virginia, passed February third, eighteen hundred and sixty-six, shall be a body corporate of and in this state, for the purposes, with the powers, rights and franchises, and subject to the obligations, restrictions and limitations, set forth in the last mentioned act, so far as the same is applicable to their contemplated line within this state; but subject nevertheless to the exceptions and provisions hereinafter contained.

Company incorporated.

The Virginia Canal Company, on certain conditions, to take possession of the Kanawha improvement.

2. Notwithstanding anything to the contrary contained in the fifth section of the first chapter of the aforesaid act of February third, eighteen hundred and sixty-six, the Virginia Canal company, after being organized as aforesaid, and after paying to this state the amount, not exceeding six thousand dollars with interest from January first, eighteen hundred and sixty-six, of eight per cent bonds heretofore sold and applied to the Kanawha improvement, and making provision to the satisfaction of the board of public works of this state, for the payment of the floating debt incurred by the Kanawha board, on account of said improvement, not exceeding ten thousand dollars, shall be entitled to take possession of the said Kanawha improvement, and shall be invested with all the rights, powers, franchises and privileges of the James river and Kanawha company, in and to the Kanawha river; and the mortgage or deed of trust heretofore given to secure the said eight per cent bonds shall be released, and the Kanawha board shall thenceforth cease to exist.

Two directors to be appointed by this state.

3. Two of the board of directors for the management of the affairs of the Virginia canal company shall be appointed by the board of public works of this state, or in such other manner for and on behalf of this state as the legislature thereof shall prescribe; and any vacancy that may occur in the office of director for this state shall be filled in like manner.

What improvement required.

4. The third section of the fifth chapter of the aforesaid act of February third, eighteen hundred and sixty-six, shall be amended and re-enacted so as to read as follows: The Virginia canal company are required to improve the Kanawha river from Lykens' Shoals to its mouth, in such manner and upon such plan, except locks and dams,

as they may adopt, so as to secure a depth of water of not less than five feet, from the fifteenth of October to the fifteenth of June, and three and one-half feet from the fifteenth of June to the fifteenth of October; the channel through the shoals to be not less than one hundred and five feet wide at the bottom and one hundred and twenty-five feet wide at the top. And after the line of improvement of the said company shall be completed, as herein provided, from Richmond to Lykens' Shoals, the depth of water in the said channels shall be increased to not less than four and one-half feet throughout the entire year, whenever the general assembly of Virginia, or legislature of this state, shall so prescribe.

Depth of water in channels.

5. So much of the sixth section of the sixth chapter of said act as authorizes an increased toll to be demanded on way trade, shall not be deemed applicable to the Kanawha river, from Loup creek to Point Pleasant, but the tolls on that part of said river shall be computed and regulated according to the through rates which may from time to time be established under and pursuant to said act.

Tolls on the Kanawha river.

6. All rights and powers reserved by the said act to the general assembly, executive, judiciary or board of public works of Virginia, shall, so far as concerns the works, property and acts of the Virginia canal company, its officers and agents, within this state, be vested in and exercised by the legislature, executive, judiciary and board of public works of this state, respectively. And the appointment of the President of the said company shall be subject to the approval of the Governor of this state, in like manner in all respects as the same is by the said act made subject to the approval of the Governor of Virginia. Any proceedings directed by the aforesaid act of February third, eighteen hundred and sixty-six, to be taken or had before, or returned to, the county court, shall be taken or had before, or returned to, the circuit court for the county; and any proceedings which may be instituted against the said company in this state, under the second section of the tenth chapter of said act, shall be by motion, in the circuit court for the county in which the seat of government of this state may at the time be located, but in other respects shall be had conformably to the last mentioned section.

Rights and powers vested in this state.

Appointment of President.

Proceedings in court.

7. No troops or persons in the military or naval service of any state shall be transported over the line of said works without the consent of the governor of this state; but troops or persons in the military or naval service of the United States, their arms, munitions and baggage, shall nevertheless be transported over said line according to the provisions of the twenty-sixth section of the sixth chapter of said act.

Transportation of troops.

8. Nothing contained in the seventh section of the eighth chapter of said act shall be construed as exempting any property, real or personal, in this state, belonging to any officer, contractor, agent, laborer, hireling or hand employed by the Virginia canal company, or engaged at work upon the line of their works, from the taxes or contributions to which property in this state belonging to other persons is or shall be subject.

Taxation of employes' property.

Attorney for company.

9. The Virginia canal company shall, by power of attorney, to be acknowledged and authenticated in the mode prescribed by law for deeds conveying land, and to be filed in the office of the secretary of the state, appoint some person residing in this state their attorney to accept service of all process and notices which may be issued in any suit or motion against the said company that may be instituted in this state for any cause of action arising therein; and so from time to time whenever there shall be no such attorney, either by reason of his death, revocation of the appointment or otherwise, shall renew such appointment. Service of process or notice upon any such attorney in any suit or motion instituted as aforesaid, shall be equivalent to service upon the Virginia canal company: and a copy of the power of attorney, certified by the secretary of the state uuder his hand, shall be evidence of the execution and contents thereof.

Chap. 47.—An ACT amending the Charter of the Town of Martinsburg.

Passed February 20, 1866.

Be it enacted by the Legislature of West Virginia:

That the fifth section of an act entitled "an act to provide for the election of mayor and common council and other officers of the town of Martinsburg, and to define their duties and powers," passed March sixth, eighteen hundred and fifty-six, be amended and re-enacted so as to read as follows:

Powers of council.

"5. For the purpose of improving the streets, and maintaining a sufficient police; of providing for the furnishing of the said town with water, and for lighting the streets and supplying the town with gas; and for the erecting of any building, water works, gas works, or any improvement of a general nature, and for carrying out the powers conferred by section twenty-five of chapter fifty-four of the code of Virginia, second edition, the council may levy and collect annually a tax on all the real and personal property within the corporation not exempt by law from taxation by the laws of this state. Provided, that the assessment and taxes aforesaid shall not exceed six mills on the dollar of the amount of property subject to taxation, as may appear by the books of the assessor of Berkeley county, or in any other manner. Provided, that no tax shall be levied for an amount exceeding three mills on the dollar of the amount of such taxable property, unless by consent of a majority of the freeholders, qualified to vote for members of the council, which consent shall be ascertained by holding a poll at such place as may be prescribed by ordinance, after giving not less than two weeks notice thereof in one or more newspapers published in said town. The result shall be determined by the face of the poll books, reserving the right to the council to examine and purge the poll books of any illegal votes.

The council may, when anything for which a license is required by chapter one hundred and thirteen, of the acts of the legislature of

West Virginia, passed at its first session, is to be done within the town, impose a tax for the privilege of doing the same, and require a license to be obtained therefor from said council, and may, in any case in which it sees fit, require from the person licensed, bond, with sureties, in such penalty and with such consideration as it may deem proper.

CHAP. 48.—An ACT to legalize the Poor Tax levied by the County Court of Berkeley County, in the year 1863.

Passed February 20, 1866.

Be it enacted by the Legislature of West Virginia:

Tax legalized.

How collected.

That the poor tax levied in the year eighteen hundred and sixty-three, in the county of Berkeley, by the court of said county, be and is hereby legalized; and that the sheriff of Berkeley county be authorized to collect and pay over to the treasurer of said county that portion of the said tax remaining unpaid.

CHAP. 49.—An ACT to amend and re-enact the act regulating allowances to county officers.

Passed February 20, 1866.

Be it enacted by the Legislature of West Virginia:

1. The "Act fixing the limits for allowances to county officers," passed November seventh, eighteen hundred and sixty-three, is hereby amended and re-enacted so as to read as follows:

Allowances to be made by board of supervisors.

Limits.

"The following named county officers shall be allowed, annually, by the boards of supervisors of their respective counties for their public services, (for which no other fee or reward is allowed by law,) to be paid out of the county treasury, such sums as the said boards deem reasonable, to-wit: prosecuting attorneys, not less than one hundred, or more than six hundred dollars; sheriffs, not less than fifty, or more than two hundred dollars; clerks of boards of supervisors, not less than fifty, or more than six hundred dollars; clerks of circuit courts, not less than fifty, or more than two hundred dollars; recorders, not less than twenty-five, or more than one hundred dollars; and jailors, not less than thirty, or more than sixty dollars; except that the prosecuting attorney for the circuit court of Ohio county, shall be allowed, annually, not less than six hundred, or more than twelve hundred dollars."

Law repealed.

2. The act passed March third, eighteen hundred and sixty-four, entitled "An act to regulate allowances to recorders," is hereby repealed.

CHAP. 50.—An ACT relating to suits brought against Supervisors and Inspectors of Elections, and providing for the payment of their costs in defending the same.

Passed February 20, 1866.

Be it enacted by the Legislature of West Virginia:

Employment of counsel.

1. That where suits have been or may be brought against the supervisors and inspectors of elections, by reason of the enforcement of the provisions of chapter fifty-six of the acts of eighteen hundred and sixty-five, the said supervisors and inspectors may employ counsel to defend their interests in the same. For services thus rendered the counsel so employed shall receive such reasonable compensation as the board of supervisors of the county in which the suit is brought may allow. A copy of the order making the allowance shall be certified to the auditor by the clerk of the board of supervisors making the same, on the receipt of which the auditor shall issue his warrant upon the treasurer for the payment of the same.

Compensation.

How paid.

Costs of suit.

2. The said supervisors and inspectors of elections may present to the circuit court for the county in which such suit may be brought, an account of all proper legal costs incurred by them in defending the same, accompanied by the proper vouchers, which, if found correct, shall be allowed by the court, and a copy of the order making the allowances shall be certified to the auditor, who shall thereupon issue his warrant for the amount.

How paid.

CHAP. 51.—An ACT to provide for a re-assessment of the value of all the real estate within this State.

Passed February 21, 1866.

Be it enacted by the Legislature of West Virginia:

Appointment of commissioner.

1. The board of supervisors of the several counties of this state shall meet at the hour of ten in the forenoon, on the twentieth day of July, eighteen hundred and sixty-six, appoint one commissioner for each assessor's district within their respective counties, and on their failure to do so, the judge of the circuit court shall make the appointment, whose duty it shall be to re-assess the value of all the real estate within the district for which he is appointed, and who shall be a resident therein, a discreet freeholder and otherwise suitable person.

Commissioner's bond and oaths.

2. Each commissioner so appointed shall within thirty days thereafter, execute a bond in the penalty of five thousand dollars conditioned for the faithful discharge of his duties, with security to be approved by the recorder of his county, and shall take the several oaths prescribed by law. The bond and oaths shall be filed in the office of said recorder, who shall certify a copy of the bond with the approval thereon, to the auditor within ten days thereafter. If, however, from any cause, the commissioner so appointed should fail to qualify within the time prescribed, the president of the board of supervisors

Failure to qualify.

shall, immediately after such failure, call a meeting of said board, who shall appoint another commissioner in his stead, who shall at once give bond and qualify, and enter upon the discharge of the duties of his office.

Auditor to furnish books and instructions.

3. The auditor shall, as soon as practicable, after receiving official information of such appointment, cause to be forwarded to each commissioner (in the care of the recorder of his county,) two books ruled in form similar to that of the assessor's land book, except as to the column for extending the tax, which may be omitted. He shall, at the same time, and in the same manner, furnish each commissioner with printed instructions prescribing in detail the manner in which they are to arrive at a proper valuation of the real estate, and in which the same shall be entered on said books.

Duty of commissioner.

4. Each commissioner so appointed and qualified, shall as soon as practicable, after receiving the books and instructions to be furnished by the auditor as aforesaid, proceed to examine all the tracts of land and town lots, with the buildings and improvements thereon, within his district, and shall upon such examination ascertain and assess the fair cash value thereof in current money. To assist him in ascertaining the said lands and town lots, he shall obtain from the clerk of the board of supervisors the land book of the district he is to assess, made for the year eighteen hundred and sixty-six, where that is practicable, or if in any county or district there be no land book for that year, then for the last year for which such book may have been made. If in any county or district there shall be no land book, then he shall proceed upon the best information he can obtain, under instructions from the auditor.

Use of land book.

Duty of Commissioner.

5. Each commissioner shall carry with him the aforesaid assessor's land book, and the entries of lands or town lots charged to any person resident or having an agent in his district, shall be shown to said person or his agent, who shall be required to state on oath whether the same be correctly entered; also, whether any other lands or lots within the district ought to be charged to such resident or non-resident. For this purpose the said commissioner is authorized to administer all proper oaths. Any person refusing to give such information shall be fined not less than twenty nor more than one hundred dollars.

Copies of assessment.

6. Each commissioner, as soon as he shall have completed the assessment in his district, shall make two copies thereof in the books to be furnished him under the provisions of section three of this act, and shall take and subscribe an oath to the following effect: "I, ——, a commissioner appointed by the board of supervisors of —— county, (*or* judge of the circuit, *as the case may be,*) to ascertain and assess the value of the real estate in the (—— district of) said county, do solemnly swear that I have diligently endeavored to ascertain all the tracts of land and town lots properly chargeable in my district, and have entered the same on the foregoing book; that I have assessed

Commissioner's oath.

the value of the same, with the improvements thereon, at a fair cash value, and have shown no partiality or favor, and that in making out said books I have followed the law and instructions provided for making said assessment, so help me God." Which oath may be taken and subscribed before any person authorized to administer oaths, and a copy thereof shall be subjoined to each of said books, one of which the said commissioner shall file with the clerk of the board of supervisors of his county, which shall be a guide for the assessor in making out his land book for the following year. The other he shall transmit to the auditor, on or before the first day of December next after the passage of this act.

How to dispose of books.

How assessment may be corrected

7. Any person feeling himself aggrieved by the assessment of his lands or lots, made under the provisions of this act, may, within one year after the verification of said commissioner's books, apply by himself or his agent to the board of supervisors of his county for redress. But before making such application, he shall give notice in writing to the prosecuting attorney of such county, that he will at the next meeting of the board of supervisors, apply to have such assessment corrected. Appended to such notice shall be an affidavit to the effect that in his opinion the assessment of his lands or lots is above their true value, or erroneous as to quantity. It shall be the duty of the prosecuting attorney, in all such cases, to attend to the interests of the state and county. If, upon hearing all the evidence, the board of supervisors shall be satisfied that the assessment on the property is too high, they shall reduce the same to its proper value, or if they shall be of opinion that the same is too low, they shall increase the valuation in like manner, and correct mistakes as to quantity of land assessed. A copy of all orders made on such application, shall be certified to the auditor, and a like copy to the assessor of such district. Such applications shall have precedence of all other business before the board of supervisors.

Duty of board of supervisors.

Pay of commissioner.

8. For services rendered under this act, in making said assessment and books, the commissioner shall be allowed the sum of three dollars for each day actually and diligently so employed, with the expense incurred by him in returning a copy of said book to the auditor, to be paid out of the state treasury. But such payment shall not be made except upon an account verified by the affidavit of the said commissioner, and approved by the board of supervisors of his county.

Penalty for neglect of duty.

9. Any officer who shall fail to perform any of the duties enjoined upon him by this act, shall, for every such failure, forfeit not less than twenty nor more than one hundred dollars.

CHAP. 52.—An ACT to relinquish to the Maryland and Virginia Bridge Company the stock in said company belonging to the State.

Passed February 21, 1866.

Be it enacted by the Legislature of West Virginia:

Relinquishment.

The interest or stock of this state in the Maryland and Virginia Bridge Company is hereby relinquished to the said bridge company, for the benefit of the stockholders thereof, other than the state; provided, that this act shall be of no effect until the said bridge company shall cause to be erected across the Potomac river, at Shepherdstown, a bridge suitable for passengers and wagons: provided, however, that if the state, by her legislature, shall at any time before the said bridge company shall have completed a bridge upon the piers and abutments owned by them, appropriate, on the part of the state, an amount toward the erection of the said bridge, proportionate to her interest in the same, then the interest so relinquished shall revert and become the property of the state, as though this act had not been passed: provided further that said company shall so far complete said bridge by the first day of June, eighteen hundred and sixty-seven, as to admit of the passage of wagons over the same.

Conditions.

CHAP. 53.—An ACT to amend Section 12 of Chapter 80 of the Acts of 1865.

Passed February 22, 1866.

Be it enacted by the Legislature of West Virginia:

Oaths of officers of Fairmont.

The last sentence of section twelve of chapter eighty of the acts of eighteen hundred and sixty-five, is amended and re-enacted so as to read as follows; "Certificates of the said oaths or affirmations shall be filed with the recorder, and the fact of their administration be stated in the journal of the proceedings of the council."

CHAP. 54.—An ACT to transfer certain lands in Ohio County to the Boards of Education of certain Townships therein.

Passed February 22, 1866.

Be it enacted by the Legislature of West Virginia:

That all parcels of land within the townships of Ritchie, Triadelphia, Liberty and Richland, in the county of Ohio, which have heretofore been conveyed to the school commissioners of Ohio county, as sites for public schools, and all real and personal property held by said school commissioners, for school purposes within said townships, shall be deemed to be vested in the boards of education for the respective townships where such property is located.

CHAP. 55.—An ACT in relation to actions of detinue.

Passed February 22, 1866.

Be it enacted by the Legislature of West Virginia:

How plaintiff may obtain immediate possession of property.

1. If the plaintiff in an action of detinue shall desire to have immediate possession of the property for the recovery of which such action is brought, he may at the commencement of the action, or at any time after, and before judgment, file with the clerk of the court, in which the action is brought, in a justice's court, with the justice before whom the same is brought or is pending, an affidavit, stating the kind, quantity and value of the property claimed by the plaintiff in such action, and that the affiant verily believes the plaintiff is entitled to recover the same therein. He shall, also, in such case, execute a bond with good security, to be approved by the clerk or justice, in a penalty at least double the value of the property claimed, payable to the defendant with condition to pay all costs and damages which may be awarded against him, or sustained by any person by reason of such suit, and to have the property so claimed forthcoming to answer any judgment or order of the court or justice respecting the same, and shall file such bond with the clerk or justice.

Plaintiff's bond.

Order for seizure of property.

2. If such affidavit and bond be filed at the commencement of the action, the clerk or justice shall endorse on the summons an order to the officer to whom the same is directed, to seize and take into his possession, the property mentioned in such summons. But if the same be filed after the commencement of the action, the clerk or justice shall issue an order reciting the pendency of the action, and stating the kind, quantity and value of the property for which the action is brought, and requiring the officer to whom the same is directed, to seize and take into his possession the property mentioned in such order.

Duty of officer.

3. It shall be the duty of the officer to whom any such summons or order is delivered, to proceed forthwith to execute the same, and he may, if necessary, break open and enter any house or other enclosure in which such property may be, in order to seize the same.

How defendant may obtain return of property.

4. The defendant, in any such action, may have the property taken possession of by such officer by virtue of such summons or order returned to him at any time within three days, after such taking, upon executing a bond with good security, to be approved by said officer, payable to the plaintiff, in a penalty at least double the value of such property, with condition to pay all costs and damages which may be awarded against him in said action, and all damages which may be sustained by any person by reason of the return of said property to him, and to have the property forthcoming to answer any judgment or order of the court or justice respecting the same, which bond shall be delivered to such officer, and by him returned to the office of the clerk or justice, who issued such summons or order. Upon the reception of such bond by the officer aforesaid, he shall

Bond.

forthwith return the property taken by him to the defendant, but in case no such bond be delivered to such officer within said three days, said property shall be delivered by said officer to the plaintiff.

Exception to sureties.

5. Either party may, upon reasonable notice to the other, except to the sufficiency of the sureties in the bond of such party, and the court, or the judge thereof in vacation, or the justice before whom such action is pending, may, upon the hearing of such exceptions, make such order in the premises as may seem just and equitable.

Effect of verdict for plaintiff.

6. Upon the final trial of any such action, if the verdict be for the plaintiff, and he be not already in possession of the property claimed, the judgment shall be that he recover the possession of said property if a recovery thereof can be had, and if not, that he recover the value thereof as found by such verdict, and in either event, that he recover the damages, if any assessed by the jury for the detention of said property, and his costs in such action. And it shall be the duty of the jury in such cases to ascertain and assess such damages as the plaintiff has sustained by reason of the detention of such property by the defendant. If the plaintiff be already in possession of such property, the judgment shall be that he retain the possession thereof, and for damages and costs as aforesaid. In case the verdict at such trial be for the defendant, if the plaintiff be in possession of the property claimed, the jury shall in like manner ascertain and assess the damages sustained by the defendant by reason of the detention of said property by the plaintiff, and also the value of said property, and judgment shall be entered upon such verdict in all respects as is provided in case the verdict be for the plaintiff.

Effect of verdict for defendant.

Execution.

7. The execution issued in such cases shall conform in all things to the judgment entered therein.

CHAP. 56.—An ACT to incorporate the Wayne County Coal and Iron Railway Company.

Passed February 22, 1866.

Be it enacted by the Legislature of West Virginia:

Corporators.

1. Richard Decker, Charles H. Reynolds, George W. Gasherie, of the city of New York, John P. Verree, of Philadelphia, Milton Shelton, Z. D. Ramsdell, Henry A. Baker, Lucien Ayer, Hamilton Mills, of Wayne county, West Virginia, John Bromley, George W. Gallup, of Louisa county, Kentucky, Thomas S. Jordan, of Greenup county, Kentucky, and their associates, successors, assigns and all who become stockholders, when five thousand shares of the capital stock of said company shall be subscribed as hereinafter provided, are hereby made a body politic and corporate, by the style and title of the Wayne County Coal and Iron Railway Company. Provided, that said subscriptions shall be made in the manner, and subjected to the provisions of the third section of chapter fifty-seven, of the code of Virginia, second edition.

Line of railroad.

2. The said company is hereby authorized to construct a railroad from some point on the Ohio river in the county of Wayne, at or near the town of Ceredo, by the most practicable route, to the forks of Twelve Pole creek, in said county, thence by the most practicable route to the mouth of Cove Creek, in said county, and thence by the most practicable route, to the Guyandotte river, in the county of Cabell, at or near the mouth of Fourteen Mile creek.

Capital stock.

Subscriptions.

3. The capital stock of said company shall be two millions of dollars, divided into shares of fifty dollars each; and books may be opened by the said corporators, or any three of them, for receiving subscriptions to the said capital stock, at such time or times and at such places as the said corporators, or any three of them, may designate.

Company subject to provisions of code.

4. The said books shall be opened and the subscriptions received in the manner provided in the code of Virginia, second edition, prescribing general regulations for the incorporation of railroad companies. The said company shall be subject to all the provisions and liabilities, and entitled to all the benefits of the aforesaid code, especially such as are specified in chapters fifty-six, fifty-seven and sixty-one, of said code, and of all other general laws now in force relating to railway companies, except when the same may be inconsistent with this act.

Company authorized to make sidings,

to borrow money,

and to hold lands.

Commencement of work.

Increase of capital stock.

5. The said company may make such sidings, branches and extensions of their said road, not exceeding fifteen miles in length, as they may deem necessary and convenient to the development of the agricultural and mineral resources of the country through which the said road passes. The said company shall also have power to borrow money, to accept and receive donations in land or money from any person or source whatever, for the purpose of building and equipping their said road, with its sidings, branches and extensions aforesaid. And the said company are authorized and empowered to purchase and hold, in fee simple or any less right, lands, not exceeding fifty thousand acres, and to sell, lease, mortgage or otherwise dispose of the same at their pleasure, and make proper conveyances therefor; and to pledge the property of the company for the payment of the same, and of the interest that may accrue thereon. The said company shall be required to commence the construction of their road within three years after the passage of this act, and shall finish at least one-third thereof within ten years from the time of commencement. If the capital stock of the said company shall be insufficient for the purposes of this act, the said company shall have power, and are hereby authorized to increase the same by the addition of as many shares as may be deemed necessary therefor.

Provisions of code not to affect charter.

6. So much and such parts of the code of Virginia hereinbefore mentioned, or of any other act or acts as may be inconsistent with the provisions of this act shall be held not to apply to the company hereby incorporated, so far as the same may in any way affect the harter hereby granted.

7. The legislature reserves the right to alter or amend this act, but such alteration or amendment shall not affect or impair the rights of creditors of the corporation to have the property and assets thereof applied to the discharge of their respective claims, or of the stockholders to have the surplus which may remain after paying the debts and liabilities of the corporation, distributed among themselves according to their respective interests. Reserved right of legislature.

CHAP. 57.—An ACT in relation to the Sixth and Seventh Judicial Circuits, and the times for holding the terms of the Circuit Courts therein.

Passed February 22, 1866.

Be it enacted by the Legislature of West Virginia:

1. The sixth judicial circuit shall be composed of the counties of Wood, Jackson, Roane, Calhoun and Wirt, and the commencement of the terms of the circuit court therein, instead of being as heretofore prescribed by law, shall be as follows: Sixth circuit.

For the county of Wood, on the tenth day of February and the tenth day of May; the twenty-fifth day of August and the twenty-fifth day of October. Wood.

For the county of Jackson, on the fifth day of March and the fifth day of June; on the fifteenth day of September and the fifteenth day of November. Jackson.

For the county of Roane, on the sixteenth day of March and the sixteenth day of June; on the twenty-sixth day of September and the twenty-sixth day of November. Roane.

For the county of Calhoun, on the twenty-third day of March and the twenty-third day of June; on the fourth day of October and the fourth day of December. Calhoun.

For the county of Wirt, on the seventh day of April, and the seventh day of July; on the twelfth day of October and twelfth day of December. Wirt.

2. The seventh judicial circuit shall be composed of the counties of Mason, Putnam, Fayette, Clay and Kanawha, and the commencement of the terms of the circuit court therein, instead of being as heretofore prescribed by law, shall be as follows: Seventh circuit.

For the county of Mason, on the twenty-fifth day of February, and the same day of April, August and October. Mason.

For the county of Putnam, on the tenth day of March, and the same day of May, September and November. Putnam.

For the county of Fayette, on the eighteenth day of March, and the same day of May, September and November. Fayette.

For the county of Clay, on the twenty-fifth day of March, and the same day of May, September and November. Clay.

For the county of Kanawha, on the second day of April, and the same day of June, October and December. Kanawha.

Law repealed.

3. So much of the sixth and seventh divisions of the third section of chapter eight of the acts of eighteen hundred and sixty-three, entitled "an act to fix the terms of the several courts," as conflicts with this act, are hereby repealed.

CHAP. 58.—An ACT to provide punishment for the cutting down, injuring or destroying trees or shrubs.

Passed February 23, 1866.

Be it enacted by the Legislature of West Virginia:

Punishment prescribed.

1. That if any person or persons shall unlawfully cut, box, bore, break, bark, bruise, pound, bump, gall, girdle, cut down, injure or destroy any fruit, ornamental, shade or other tree or trees, vine, bush or sapling standing in gardens, orchards, nurseries, streets, side-walks, groves, fields or forests, or take or destroy any fruit or garden or farm products, the property of another, of any value whatever, every such person or persons shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not less than one nor exceeding ten dollars, and costs, or be imprisoned in the jail of the county not exceeding ten days, at the discretion of the justice, and shall moreover be liable to the party injured in treble the amount of damages by him sustained. All acts inconsistent herewith are hereby repealed.

Commencement of prosecutions.

2. All prosecutions under this act shall be commenced within six months after the offence is committed.

CHAP. 59.—An ACT to incorporate the town of Ceredo, in the county of Wayne.

Passed February 23, 1866.

Be it enacted by the Legislature of West Virginia:

Corporate limits.

1. The corporate limits and boundaries of the town of Ceredo, Wayne county, West Virginia, shall be as follows: Beginning at the mouth of Twelve Pole Creek, thence up said creek forty rods south of the "old military line," thence due west three hundred rods, thence north to the Ohio River, at the "old Morgan mill," thence up the Ohio River to the place of beginning.

Municipal authorities.

2. The municipal authorities of said town shall be a mayor, a recorder and five councilmen, who, together, shall form a common council.

Corporation.

Its powers.

3. The mayor, recorder and councilmen, so soon as they have been elected and qualified, as hereinafter provided, shall be a body politic and corporate, by the name of "The Town of Ceredo," and shall have perpetual succession, and a common seal; and by that name may sue and be sued, implead and be impleaded; may purchase and hold real estate necessary to enable them the better to discharge their duties, and needful for the good order, government and welfare of said town.

4. All the corporate powers of said corporation shall be exercised by said council, or under their authority, except where otherwise provided. How exercised.

5. There shall be a town sergeant, a treasurer and commissioner of the revenue, appointed by the council, to continue in office at its pleasure, and perform the duties respectively, as hereinafter prescribed, or as may be required by the council. Sergeant, treasurer and commissioner.

6. The duties of the office of recorder, treasurer and commissioner of the revenue may be discharged by the same person, or otherwise, as the council may from time to time determine.

7. The mayor, recorder and councilmen shall be elected by the citizens of the said town, who may be entitled to vote under this act, and (except when elected to fill vacancies,) for the term of one year, and until their successors shall have been qualified, and shall be freeholders and residents of said town, and entitled to vote for members of the common council. Term of officers.

8. The first election under this act shall be held on the third Saturday in March, eighteen hundred and sixty-six, at the Ceredo House in said town, under the supervision of a justice of Ceredo township, and annually thereafter there shall be an election on the same day in each year, at such place and under such supervision, rules and regulations as the council of said town may prescribe. The person conducting the first election shall grant certificates to the persons elected, which shall be entered upon the records, with ordinances of said council, and their term of office shall commence on the first day of April next after election. Elections.

9. All persons, residents of said town, and entitled to vote for county and township officers, shall be entitled to vote for mayor, recorder and councilmen. Who entitled to vote.

10. When a vacancy shall occur from any cause, in the office of mayor, recorder or in the council, the vacancy shall be filled by appointment by the council. Vacancies in office.

11. At all elections, the vote shall be by ballot, and when two or more persons for the same office, at any election, shall receive an equal number of votes, the person or persons conducting such an election shall decide which of the said persons shall be returned elected. And all contested elections shall be heard and determined by the council, for the time being. Elections.

12. The mayor, recorder, councilmen, sergeant, treasurer and commissioner of the revenue shall each, before entering upon the duties of his office, and within ten days after being furnished with a certificate of his election, take and subscribe the oath of loyalty prescribed for county and township officers, and that they will truly, faithfully and impartially discharge the duties of their said offices, respectively, to the best of their abilities, so long as they continue Oaths of officers.

therein. The recorder shall take such oath or affirmation before a justice or other officer authorized to administer oaths, and thereupon he shall administer the oaths aforesaid to the other officers and councilmen. Certificates of the said oaths or affirmations shall be recorded in the journal of the proceedings of the council.

Councilmen.

13. When any four of the newly elected councilmen shall have been so qualified, they shall enter upon the duties of their said offices and supersede the former councilmen.

When offices declared vacant.

14. If any one elected mayor, recorder or councilman shall not have been eligible, or shall fail or refuse to take the oath or affirmation required under this act, within the ten days aforesaid, such office shall be declared vacant, and the vacancy filled as hereinbefore prescribed, but in all cases from among the citizens of the town eligible to such office or position under this act.

Council.

15. The council shall be presided over at its meetings by the mayor, or in his absence by one of the councilmen selected by a majority of the council present, and a majority of the council shall be necessary to constitute a quorum to do business.

Its journal.

16. The council shall cause to be kept in a journal, an accurate record of all its proceedings, by-laws, acts and orders, which shall be fully indexed and open to the inspection of the voters in the town.

Its proceedings.

17. The proceedings of last meeting shall be read to the council, corrected when necessary, and signed by the person presiding for the time being. Upon the call of any member, the ayes and noes on any question shall be called and recorded in the journal. The mayor, though voting as a member of the council, in cases of a tie, shall have the casting vote.

Its powers.

18. The council, so constituted, shall have power within said town to lay off, open, curb and pave streets, alleys, walks and gutters, for the public use; and to alter, improve and light the same, and have them kept in order, and free from obstructions on or over them; to regulate the width of the sidewalks and streets, and to order the sidewalks, footways and gutters to be curbed, paved and kept in good order, free and clean, by the owners or occupants of the adjacent property; to lay off public grounds and provide, contract for and take care of public buildings proper to the town; to prevent injury or annoyance to the public or individuals, from anything dangerous, offensive or unwholesome; to abate or cause to be abated, anything which, in the opinion of a majority of the whole council, shall be a nuisance; to regulate the keeping of gunpowder and other combustibles; to provide for the burial of the dead, and for this purpose may purchase and hold the necessary land for a cemetery near or convenient to said town, and provide for its improvement and security; to provide for the regular building of houses and other structures in or for said town; for the making of division fences, and to provide for shade and ornamental trees, and against danger or damage from fires

or contagious diseases; to provide a revenue for the town, and appropriate the same, and to provide the annual assessment of taxable persons and property of the town; to adopt rules for the transaction of business and the government and regulation of its own body; to promote the general welfare of the town, and protect the property, and preserve peace and good order therein; to keep a town guard; to appoint and order out a patrol for the town when deemed necessary; to appoint such officers as they may deem proper, including a sergeant, commissioner of the revenue, and treasurer; to define their powers, prescribe their duties, fix their term of service and compensation, require and take from them bonds, with such sureties and in such penalties as the council may determine, conditioned for the true and faithful discharge of their duties, and remove them at pleasure, (all bonds to be made payable to the town by its corporate name;) to erect, or authorize, or prohibit the erection, of gas works, or water works, in or near the town; to prevent injuries to, or pollution of the same; for all of which purposes named in this clause, except that of taxation, the council shall have jurisdiction for one mile beyond the borough; to regulate and provide for weighing and measuring of hay, coal and other articles sold or for sale in said town, and to regulate the transportation thereof through the streets, and generally do such things as the council shall deem necessary for the interests, prosperity, peace and good order of the citizens of said town.

Same.

19. To carry into effect these enumerated powers, and all others conferred upon said town or its council, expressly or by implication, in this or any other acts of the legislature, the council shall have power to adopt and enforce all needful orders, by-laws and ordinances not contrary to the constitution and laws of this state, and to prescribe, impose and enforce reasonable fines and penalties, including imprisonment for a term not exceeding thirty days, under the judgment and order of the mayor of the said town, or the person lawfully exercising his functions. The council, with the consent of the supervisors of Wayne county, entered of record, may have the right to use the jail of said county for any purpose necessary in the administration of its affairs.

Annual levy.

20. The annual levy ordered by the council may be upon all male persons within said town, over twenty-one years of age; dogs, hogs, and other animals, and on all real estate within said town which is not exempt from state taxation, and all such other subjects in said town as may at the time be assessed with state taxes, provided the tax do not exceed one dollar on every hundred dollars of value of unimproved lots, and seventy-five cents on every one hundred dollars of the value of real and personal property, or two dollars per head on each taxable person.

Licenses.

21. When anything for which a state license is required is to be done within the said town, the council may require a town license to be had for doing the same, and may impose a tax thereon for the use

of the town, and the council may in any case require from the person so licensed, a bond with sureties, in such penalties and with such conditions as it may determine.

Duties, powers and compensation of sergeant.

22. The sergeant shall collect the town taxes, fines, levies and licenses, and after thirty days from the time he may receive the books of the commissioner of revenue of said town, may distrain and sell therefor, in like manner as a sheriff may for state taxes, and shall in all respects have the same power as a sheriff to enforce the payment and collection thereof, and shall, within the corporate limits of the town, exercise all the duties that a constable can legally exercise in regard to the collection of claims, executing and levying process, and shall be entitled to the same compensation therefor; and he and his securities shall be liable to all the fines, penalties and forfeitures that a constable is legally liable to for any failure or dereliction in said office, to be recovered in the same manner and before the same tribunals that the same are now recovered against constables.

Lien on real estate for taxes.

23. There shall be lien on real estate for the town taxes assessed thereon, from the commencement of the year for which they are assessed, and the council may order and require the same to be sold or rented by the sergeant at public auction for the arrears, with interest thereon, with such per centum as the council may prescribe, for charges and expenses thereof, and may regulate the terms upon, and time within, which the same may be redeemed. No such sale or renting shall be ordered until such realty shall be returned delinquent, and the sale shall be after thirty days notice, posted at the hotel and postoffice in said town.

24. The council may prohibit any theatrical or other performance, show or exhibition it may deem injurious to the morals or good order of the town.

Duties, powers and compensation of mayor.

25. The mayor shall be the chief executive officer of the town, shall take care that the by-laws, ordinances and orders of the council are faithfully executed; shall be, *ex officio*, a conservator and justice of the peace in the town, and shall, within the same, exercise all the powers and duties vested in justices; shall control the police of the town, and may appoint special police officers; shall see that peace and good order are preserved, and that the persons and property are protected in the town; shall have power to issue executions for all fines and costs imposed by him, or may require the immediate payment of them, and in default of such payment may commit the party in default to jail until the fine and costs be paid, but the term of imprisonment in such cases shall not exceed thirty days. He shall from time to time recommend to the council such measures as he may deem needful for the welfare of the town, and shall receive a compensation for his services, fixed by the council, which shall not be increased or diminished for the term for which he is elected.

Duty and compensation of recorder.

26. The recorder shall keep a journal of the proceedings of the council, and have charge of and preserve the records of the town,

and shall receive a compensation for his services, to be fixed by the council, which shall not be increased or diminished for the term for which he was elected.

27. All money belonging to said town shall be paid over to the treasurer, who shall pay the same out on the order of the mayor, countersigned by the recorder, and not otherwise; and for any default or liability upon the part of the treasurer or sergeant, the council, in the corporate name of said town, may, on motion, after ten days' notice, obtain judgment before the circuit court of said county, on account therefor, against them and their securities respectively, or any or either of them, or their heirs or legal representatives.

Duty of treasurer.

28. The said town, and taxable persons and property therein, shall be exempt from all expense or liability for the construction or repair of roads or bridges outside the corporate limits of said town: provided, however, that the said town shall keep its streets and alleys in good order and provide for its own poor.

Exemption from road tax.

CHAP. 60.—An ACT to consolidate the towns of Moundsville and Elizabethtown.

Passed February 23, 1866.

Be it enacted by the Legislature of West Virginia:

1. That the towns of Moundsville and Elizabethtown, in Marshall county, are hereby consolidated into one corporation, under the name of the town of Moundsville.

Towns consolidated.

2. The corporate limits of the town of Moundsville shall be and remain the same as are now fixed and defined by existing laws as the corporate limits of Moundsville and Elizabethtown.

Corporate limits.

3. The council of said town shall consist of a mayor and eight councilmen, who, with the sergeant and two, at least, or more aldermen, if the council shall so direct, shall be elected annually on the fourth Thursday in May, and shall continue in office for one year, or until their successors shall be elected and qualified.

Council.

4. The first election for mayor and councilmen, sergeant and aldermen, shall be held at the court house on the fourth Thursday in May, next, under the supervision of the sheriff, and succeeding elections under the supervision of the sergeant; and the mayor and councilmen so elected shall constitute the common council of the town of Moundsville. And all the powers, rights, capacities and privileges vested in the council of a town by the fifty-fourth chapter of the code of Virginia, shall be vested in the council of the town of Moundsville.

Elections.

5. The council of the town aforesaid, and all the other officers, shall continue in office with all their existing powers, rights and duties, until the first election is held as hereinbefore provided, and the council of the town of Moundsville shall have been duly qual-

Transfer of property to the new town.

ified, and no longer, and when the council of the town of Moundsville is elected and duly qualified, all the real and personal estate, and all the funds, rights, titles, taxes, credits and claims, and rights of action of the town of Moundsville, and also of Elizabethtown, or which have been appropriated for the benefit of said towns, or either or both of them, shall be and the same are hereby transferred to and vested in the said corporation created by this act. And all contracts with, and all rights, claims and demands against the corporations of Moundsville and Elizabethtown shall be good in law against the corporation hereby created.

What lands exempt from taxation.

6. The lands lying within the corporate limits not yet laid off into lots, streets and alleys, shall not be subject to town taxes so long as they remain in their present state, but when they shall have been so laid off by the proprietors thereof respectively, no lots remaining unsold in the hands of such proprietors shall be subject to taxation by the corporation until assessed, unless improvements of the assessed value of one hundred dollars shall have been erected thereon.

Voters.

7. Every male citizen of the state, of the age of twenty-one years or upwards, and who, for sixty days preceding any election, has resided in Moundsville or Elizabethtown, or the town of Moundsville hereafter, and is qualified to vote for members of the legislature, and no other person, shall be qualified to vote in all town elections.

Powers of mayor and alderman.

8. The mayor and aldermen, in addition to the duties and powers conferred by the fifty-fourth chapter of the code of Virginia, shall have cognizance of any claim to a fine or penalty under any ordinance or by-law of the said town, and any other claims in or against the corporation or any person residing therein, if the same be not of greater value or amount than one hundred dollars, exclusive of interest, and shall have power to issue writ of *fieri facias* upon any judgment obtained on any such fine, penalty or claim.

Appeal from judgment of mayor or alderman.

9. In any civil case in which the amount in controversy, exclusive of interest, shall exceed ten dollars, either party feeling aggrieved by the decision of the mayor or alderman, shall have the right to appeal to the circuit court of Marshall county, in the same manner and on the same terms, and subject to the same limitations, as appeals are now allowed from the judgment of a justice of the peace. And in any case, not civil, in which a fine exceeding five dollars, or imprisonment in the county jail, shall be imposed, the person against whom such judgment is, shall have the right to appeal from such judgment to the circuit court of said county, on the same terms and subject to the same limitations that appeals are now allowed to said court from the judgment of a justice of the peace. But in all cases of appeals, other than for fines, the mayor or alderman shall fix the penalty in an appeal bond to be entered into by the appellant with good security, conditioned that the said appellant shall, in case such judgment or license be affirmed, abide by and perform the same.

10. The sergeant of said town shall, in all criminal cases, as well as in the service of warrants and execution of writs of *fieri facias*, have the same powers, duties and fees, and be subject to the same penalties that are prescribed by law for constables in similar cases, and shall give bond with good security in a penalty to be approved of by the council, and payable to the town of Moundsville, conditioned for the faithful discharge of the duties of his office, and may with the consent of the council, appoint one or more deputies.

Duties, powers and bond of sergeant.

11. For the purpose of carrying into effect the police regulations of said town, the town shall be allowed the use of the county jail for safe keeping and confinement of all persons who shall be sentenced to imprisonment under the ordinances or laws of said town, and all persons so confined shall be under the charge and custody of the sheriff of said county, who shall receive, keep and discharge such persons in such manner as shall be prescribed by the ordinances of said town, or otherwise shall be discharged by due course of the law. But the town shall in all such cases be liable to the sheriff for the fees and expense so incurred.

Town may use county jail.

12. The council of said town shall have power to tax dogs and subject them to such regulations as the council may deem proper.

Dog tax.

13. The council of said town shall have power and authority to change the streets and alleys, and to lay off and open additional streets and alleys in any part of said town, upon making just compensation to the owners of lots or ground taken for such purpose or affected thereby, and also to sell and convey in fee any street or alley which said council may deem of no public utility.

Change of streets.

CHAP. 61.—An ACT to amend and re-enact the first section of an Act passed February 1, 1847, entitled "An Act to incorporate the Male and Female Academy of Buckhannon."

Passed February 23, 1866.

Be it enacted by the Legislature of West Virginia:

That David S. Pinnell, Levi Leonard, Joseph D. Rapp, Nicholas C. Loudin, Thomas G. Farnsworth and Marshal Rohrbaugh, be and they are hereby created a body politic and corporate, by the name and style of the "Trustees of the Male and Female Academy of Buckhannon," in the county of Upshur, and by that name shall have perpetual succession and a common seal, may sue and be sued, plead and be impleaded, with power to purchase, receive and hold to them and their successors forever, any lands, tenements, rents, goods and chattels of what kind soever, which may be purchased by or be devised or given to them for the use of said academy, and to lease, sell, rent or otherwise dispose of the same in such manner as shall seem most conducive to the advantage of said academy: provided that the lands, goods and chattels so authorized to be held, shall not

Academy incorporated.

Proviso.

exceed in amount or value the sum of twenty-five thousand dollars: and, provided, that not less than a majority of the trustees for the time being shall be sufficient to authorize the sale or mortgage of any real estate belonging to saïd academy.

CHAP. 62—An ACT to dissolve and close the Branch of the Exchange Bank of Virginia, at Weston.

Passed February 23, 1866.

Be it enacted by the Legislature of West Virginia:

Officers of bank empowered to close it.

1. The president and directors now in office, of the Branch of the Exchange Bank of Virginia, at Weston, are hereby authorized to dissolve the same, and dispose of its property, real and personal; collect, settle, and compromise its debts and claims, and distribute the proceeds, including the money now on hand, as hereinafter directed. And in the exercise of the said authority they may adopt and use a common seal for the said branch, and in the name of "the Exchange Bank of Virginia," for and on behalf of said branch, may sell and convey, assign and transfer, any of said property, and may sue and be sued, and shall continue to exercise the functions of their offices until the business of said branch is closed up, and from time to time fill vacancies that may occur in their body.

How money coming to their hands shall be applied.

2. All money which may come to the hands of the said president and directors, for or on account of said branch, (after defraying necessary expenses,) shall be by them applied as follows: first, to the payment of all debts and liabilities due or to become due by said branch, such of the circulating notes of the Exchange Bank of Virginia issued prior to April seventeenth, eighteen hundred and sixty-one, as may have been made payable at the branch at Weston, but not including any other of the circulating notes of the said Exchange Bank, or any debts or liabilities of the mother bank or any other branch thereof; second, to pay, if sufficient, to the persons who are now citizens of West Virginia, and owners of stock in the said Exchange Bank, the par value of their stock, with interest thereon from the first day of July, eighteen hundred and sixty-two; and, lastly, the residue, if any, to be paid into the treasury of this state.

Transfer of certain stock to state.

3. The said Branch of the Exchange Bank of Virginia at Weston, is authorized to transfer the capital stock owned by it or any part thereof in the National Exchange Bank of Weston, to this state, to be accounted for to the said Branch at the par value thereof, as so much of the proceeds of said Branch, directed by the preceding section to be paid into the treasury of this state.

Suits by branch.

4. The said Exchange Bank of Virginia, at Weston, for the purpose of ascertaining and determining the rights and interests of the several claimants to the distribution of the property and proceeds of the said branch, mentioned in the first section of this chapter, is authorized to commence and prosecute a suit or suits in the courts of this state, against any and all such claimants, including this state.

5. The said Exchange Bank of Virginia, at Weston, shall not be liable to any penalty by reason of any law now in force, for a failure to redeem its circulating notes as heretofore required by law.

CHAP. 63.—An ACT for the relief of Francis H. Peirpoint.

Passed February 23, 1866.

Be it enacted by the Legislature of West Virginia:

Appropriation.

The sum of one hundred and twenty-nine dollars and seventy cents is hereby appropriated to pay the expenses incurred by Francis H. Peirpoint, Governor under the restored government of Virginia, in defending the suit instituted against him by George W. Thompson, for alleged false imprisonment.

CHAP. 64.—An ACT to repeal chapter eight, of the acts of eighteen hundred and sixty-five.*

Passed February 23, 1866.

Be it enacted by the Legislature of West Virginia:

Chapter eight of the acts of eighteen hundred and sixty-five is hereby repealed.

Proviso.

Provided that no suit brought in Preston county under the provision of the first section of the chapter above mentioned, shall be transferred from Preston to either of the other counties mentioned in said section by virtue of this act, except by the consent of both parties.

CHAP. 65.—An ACT for the relief of the Overseers of the Poor of the county of Brooke.

Passed February 24, 1866.

Be it enacted by the Legislature of West Virginia:

Allowed to make a new report of expenses.

1. That it shall be lawful for the overseers of the poor of the county of Brooke, to make a new report of their expenses for the year ending on the thirty-first day of March, eighteen hundred and sixty-four, as now directed by law, and to present the report so made to the board of supervisors of the said county, at their annual meeting in June, eighteen hundred and sixty-six.

Levy for amount reported.

2. The amount, which, according to such report, the aforesaid overseers will require, shall be chargeable on said county; and the board of supervisors of the said county of Brooke, when it orders the annual levy for the year eighteen hundred and sixty-six, shall provide for the said amounts together with a sufficient sum to pay what interest may have accrued on said amount till paid. It shall be payable out of the proceeds of the said levy to the overseers aforesaid, and shall be paid thereout, to such person and in such sums as the said board of overseers may direct.

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*The act intended to be repealed is evidently chapter 8 of the acts of 1864, "An act to authorize suits to be brought in the county of Preston, in cases heretofore cognizable in certain other counties."

CHAP. 66.—An ACT to dispense with the Assessment of back Taxes in certain Counties.

Passed February 24, 1866.

Be it enacted by the Legislature of West Virginia:

Lands in certain counties not to be assessed

1. In any county where the taxes on persons and property, either real or personal, have not been assessed, and the assessment returned to the auditor's office, for any year or years, from eighteen hundred and sixty-one to eighteen hundred and sixty-four, inclusive, the assessor or assessors of such county are hereby released from the duties imposed by the provisions of section seventy-seven of chapter one hundred and eighteen of the acts of eighteen hundred and sixty-three, as to the assessment of back taxes for any of said years; except that the land of all non-residents, which is situated in any such county shall be assessed.

or taxed, for certain years;

2. All persons and property, either real or personal, are hereby released from all liability for the taxes of eighteen hundred and sixty-one to eighteen hundred and sixty-four inclusive, in any county where the same have not been assessed, or having been assessed, where the assessment of the same has not been returned to the auditor's office: Provided, however, that lands owned by non-residents of the state shall not be exempted from taxation.

except lands of non-residents.

CHAP. 67.—An ACT supplemental to the Act establishing the County of Mineral.

Passed February 24, 1866.

Be it enacted by the Legislature of West Virginia:

Certain officers to be appointed by board of supervisors.

1. There shall be a recorder, assessor, county treasurer, surveyor of lands and superintendent of free schools for the county of Mineral, and three school commissioners for each township thereof. The board of supervisors of said county shall appoint persons to fill said offices until the first day of January, eighteen hundred and sixty-seven.

Offices of clerk and recorder.

2. The offices of the clerk of the circuit court and recorder may be either at Piedmont or New Creek, as the board of supervisors of said county may order, until the court house at New Creek is completed. The circuit courts for said county shall be held at the place at which the clerk's office is kept, until the court house is completed.

Board of supervisors may borrow money.

3. The board of supervisors of the county shall have power to borrow money not exceeding twenty thousand dollars, at legal interest, and to issue the bonds of the county for the same, to be used in the construction of the public buildings of said county.

Commissioners to run dividing line.

4. Thomas B. Davis, of the county of Mineral, and George W. Washington, of the county of Hampshire, are hereby appointed commissioners to run the dividing line between the said counties of Mineral and Hampshire, according to the act creating the said county

of Mineral. The said commissioners shall have power to employ a competent surveyor, who shall run and mark the said line under their direction, and, in case they differ, shall decide between them. The said surveyor shall make three plats of the boundary line run by him, one of which shall be delivered by the said commissioners to the recorders of each of the counties of Mineral and Hampshire, and the third one shall be delivered to the secretary of the state, to be preserved by them in their respective offices. The supervisors of Mineral county shall provide for the expenses of running and marking said line.

5. Persons committed to jail in Mineral county may be confined in the jail of Berkeley or any other county of this state, provided Mineral county pays all proper and legal expenses.

Use of Berkeley county jail.

CHAP. 68.—An ACT to amend section 1 of chapter 78, of the acts of the General Assembly of the State of Virginia, passed February 13, 1862.

Passed February 24, 1866.

Be it enacted by the Legislature of West Virginia:

Section one of chapter seventy-eight of the acts of the general assembly of Virginia of eighteen hundred and sixty-two, is hereby amended and re-enacted so as to read as follows:

"1. That the council of said city shall have authority to levy an annual tax on all real estate and tithables, within the limits of said city without exception; provided, that such tax shall not in any one year exceed the sum of fifty cents for each tithable, and fifty cents on every hundred dollars value of said real estate. And, provided, that nothing contained in this act shall be so construed as to authorize taxation on the real estate lying and being situated on Zane's Island, owned by the legal representatives, heirs, or devisees of Daniel Zane, or the trustees of Ebenezer Zane's estate, or by Richard V. Whelan, or Elijah F. Stone, so long as the same shall continue to be owned by them, their legal representatives, heirs or devisees, or held under said trust, otherwise than the same would be taxable if this act had not passed, except that any part of the same may be taxed when laid out into town lots. And for the purpose of ascertaining such value, the council shall annually appoint one assessor from each ward, which assessors shall be freeholders in said city, and shall be sworn impartially and faithfully to make such appraisement.

Power of council of Wheeling to levy tax.

Certain property exempted from taxation.

Chap. 69.—An ACT changing the time of holding the Terms, for civil business, of the Municipal Court of Wheeling.

Passed February 24, 1866.

Be it enacted by the Legislature of West Virginia:

The thirteenth section of chapter fifty-one, of the acts of eighteen hundred and sixty-five, passed the twenty-fourth day of February, eighteen hundred and sixty-five, is amended and re-enacted so as to read as follows:

Terms for civil business to be held eight times a year.

"13. For the exercise of the jurisdiction and powers conferred by the two last sections, (hereafter called *the civil* jurisdiction of the said court) the court shall hold its terms eight times in each year, that is to say, on the third Monday of April, June, July, August, September, November, January and February, commencing on the third Monday of April eighteen hundred and sixty-six, and each term to continue until adjourned by the judge thereof, to the succeeding term. But if any such term be not commenced on the day hereby appointed, or the Tuesday or Wednesday next after the same, all suits and proceedings then pending therein, shall stand continued without any special orders to that effect, to the succeeding term."

The fourteenth section of the said chapter is amended and re-enacted so as to read as follows:

Where held.

"14. The said sessions shall be held at such place within the city as the council may from time to time provide for the purpose. The council shall also provide an office in the city for the clerk of the said court."

Chap. 70.—An ACT to establish the Eleventh Senatorial District out of a part of the Tenth.

Passed February 24, 1866.

Preamble.

Whereas, the counties of Berkeley and Jefferson have been admitted into, and become a part of this state, since the adoption of the constitution thereof, and whereas, adequate provision has not yet been made for the representation of the white population of said counties, in the senate, as required by the sixteenth section of the fourth article of the constitution. Therefore,

Be it enacted by the Legislature of West Virginia:

Eleventh district formed.

1. The counties of Berkeley and Jefferson shall constitute the eleventh senatorial district, and be entitled to two senators.

Present senators for tenth district.

2. The senators now representing the tenth senatorial district being residents of the eleventh district as constituted by this act, are hereby declared to be senators of the said eleventh district, and shall hold their offices as such during the temrs for which they have respectively been elected.

3. An election shall be held at the next annual state election, for two senators for the tenth senatorial district, and the senators so elected shall be classified and hold their offices as prescribed by the third section of the fourth article of the constitution.

Election for senators for tenth district.

CHAP. 71.—An ACT to relieve the securities of Joshua H. Staats, late Sheriff of Jackson County.

Passed February 24, 1866.

Be it enacted by the Legislature of West Virginia:

That the securities of Joshua H. Staats, late sheriff of Jackson county, be and they are hereby relieved from all liability to the state of West Virginia, including all judgments rendered against them as such securities in the city of Richmond.

CHAP. 72.—An ACT to amend and re-enact the first section of an act entitled "An Act authorizing the present and former Sheriffs of Ohio county to pay certain moneys to the treasurers of Ritchie and other townships in said county," passed February 16, 1865.

Passed February 24, 1866.

Be it enacted by the Legislature of West Virginia:

That section one of an act entitled "An act authorizing the present and former sheriffs of Ohio county to pay certain moneys to the treasurers of Ritchie, Triadelphia, Liberty and Richland townships in said county," be amended so as to read as follows:

"1. All moneys which have been heretofore appropriated for the purpose of carrying on schools in the townships of Ritchie, Triadelphia, Liberty and Richland, in Ohio county, by the school commissioners of said county, and which are still held by the sheriff of said county, or by any former sheriff or sheriffs of said county, as treasurers of the school commissioners of said county, shall be paid to the county treasurer of said county, on the order of the school superintendent of said county, subject to the same conditions as are provided for the payment to said treasurer of other school funds. And the said treasurer of the county is hereby authorized to collect by law, all sum or sums that may be due and unpaid from said sheriffs, or any of them, for which he shall have a reasonable and just compensation."

Certain school moneys to be paid to county treasurer.

CHAP. 73.—An ACT to change the times of holding the Courts in the Eighth Judicial Circuit.

Passed February 24, 1866.

Be it enacted by the Legislature of West Virginia:

That the commencement of the terms of the circuit court in the several counties of the eighth judicial circuit shall hereafter be as follows:

Raleigh. For the county of Raleigh, on the first Monday of March, May, September and November.

Wyoming. For the county of Wyoming, on the second Monday of March, May, September and November.

Logan. For the county of Logan, on the third Monday of March, May, September and November.

Boone. For the county of Boone, on the fourth Monday of March, May, September and November.

Wayne. For the county of Wayne, on the second Monday of April, June, October and December.

Cabell. For the county of Cabell, on the third Monday of April, June, October and December.

CHAP. 74.—An ACT providing for the establishment of a system of Free Schools.

Passed February 26, 1866.

Be it enacted by the Legislature of West Virginia:

Establishment of free schools. 1. In conformity with the constitution, a system of free schools is hereby established, in order to furnish instruction for the youth of the state, in such branches of learning as are necessary to the proper discharge of their social and civil duties. Every township now organized, or which may hereafter be organized in the state, shall be divided into a suitable number of school districts, to be managed as hereinafter directed.

School commissioners, their election, 2. At the time and place of holding elections for township officers, the qualified voters of the several townships, shall, in addition to the officers therein specified, elect three school commissioners, of whom the one having the highest number of votes shall serve three years; terms of office the one having the next highest number of votes shall serve two years, and the one having the next highest number of votes shall serve one year; and annually thereafter at the time and place of holding township meetings and elections, one commissioner shall be elected, who shall serve three years: provided, that if at the first election any two or more of the school commissioners elected shall have an equal number of votes, the persons so elected shall determine by lot the duration of their respective terms of office; and and eligibility. provided further, that no person shall be deemed ineligible to the office of school commissioner in consequence of having held the office the preceding term; and that after the first election two commissioners shall not be chosen from the same school district, if there be so many as three in the township.

3. The commissioners so elected shall, within ten days after being duly notified by the township clerk, proceed to qualify by taking the several oaths prescribed by law, which oaths the clerk of the township is hereby authorized to administer to the commissioners aforesaid; a copy of which oaths, signed by the commissioners, shall be kept by him upon the files of his office. And if any vacancy should occur in the office of school commissioner, the board of education of the township shall fill such vacancy within ten days after being informed thereof, by the appointment of some suitable person, who shall serve until the next annual township election, when a commissioner shall be elected for the unexpired term.

Qualification of commissioners.

Vacancies.

4. The commissioners, together with the clerk of the township, shall constitute the board of education for their township, and they and their successors in office shall be a body corporate in law, under the name and style of "The Board of Education of the Township of ——," and as such may purchase, hold and sell or convey real and personal property, for the uses of education within their district, may receive any gift, grant, donation or devise; may become a party to suits and contracts; and do other corporate acts. They shall have the management of, and be invested with the title to, all real and personal property for the use of the public schools within their township, and shall manage or dispose of the same, as in their opinion will best subserve the interests of the schools.

Incorporation and powers of township board of education.

5. The clerk of the township shall be the secretary of the board of education, but shall have no vote except in the case of an appointment to fill a vacancy in the office of school commissioner. He shall be present at all meetings of the board, and shall record, in a book to be provided for the purpose, all their official acts and proceedings, which shall be a public record, open to the inspection of all persons interested therein; all which proceedings, when so recorded, shall be attested by his signature thereto as secretary of the board. He shall have the care of, and shall preserve in his office, all papers containing evidence of title, contracts and obligations; and in general shall record or keep on file in his office, all such papers and documents as may be so required by any of the provisions of this act, or by the orders of the board of education. It shall also be the duty of the township clerk to make an annual report to the county superintendent on or before the thirty-first day of August, of each year. For his services he shall receive such compensation as the board of education may determine. In his absence the board may appoint a clerk *pro tempore.*

Secretary of board.

His duties and compensation.

6. The board of education of each township shall, so soon as practicable after they are duly elected and qualified, and annually thereafter, within sixteen days after the fourth day of July, take or cause to be taken, an enumeration of all the youth resident within each school district, between the ages of six and twenty-one years, distinguishing between males and females, white and colored, and shall cause the result, verified by the oath or affidavit of the person taking

Enumeration of youth.

the same, to the effect that such enumeration is correct, and that he has used all the means in his power to have it so, to be recorded in the office of their clerk; which enumeration shall be transmitted by the said secretary to the county superintendent. They shall divide their township into convenient school districts, assigning to each not less than fifty youths, between the ages of six and twenty-one years, except in cases where, in the opinion of the board, it is necessary to reduce the number, and shall cause to be taught in each district, one school for not less than six months in the year, in which shall be taught, by competent teachers, orthography, reading, writing, arithmetic, English grammar and geography. In making these districts, due regard shall be had to any schoolhouse already erected, or school house site already secured, so far as may best subserve the interests of free schools. The board of education first elected after the organization of their township, shall appoint three trustees in each school district, who shall serve till their successors are elected, as provided in the twenty-fifth section of this law.

Formation of school districts.

Appointment of school trustees.

Reports and duties of board of education.

7. They shall receive and revise the reports of the trustees of each district of their township, and may return them to the trustees for revision and correction. From the corrected reports they shall make a report in tabular form, by districts, embracing each item, to the county superintendent, on or before the thirty-first day of August in each year, and shall add to said report such other information as may be necessary and beneficial in order to form a just estimate of the operations of the school system. They shall cause suitable lots of ground to be procured, and suitable buildings to be erected, purchased or rented, for school houses, and shall supply them with such furniture and fixtures as are necessary to the comfort, health, good order and progress of the pupils. They shall pay all expenses of enrollment, building, purchasing property, rent and other outlay necessary to the performance of their duties by drafts on the treasurer of the county, which drafts shall be signed by the clerk.

How judgment against board satisfied.

8. When any judgment shall be obtained against any township board of education, it shall be the duty of the county superintendent to assess the amount of such judgment, with interest and costs, upon the taxable property of their township, which amount shall be collected and paid out in the same manner as other school taxes, upon the order of the clerk of said board upon the county treasurer, to satisfy the judgment aforesaid. If the justice or court trying the case shall determine that the board of education, or a majority of its members, are guilty of an unlawful act, said judgment shall be satisfied by said board or said majority equally, as the case may be.

Establishment of union schools.

9. Whenever, in the opinion of the board, the interest of education within their township require that a central or union school of higher grade be established, the said board shall call a township meeting, by giving at least ten days' notice, by written or printed advertisements, posted in at least five of the most public places

within their township, specifying the time, place and object of the meeting, which meeting, when convened, shall be organized and conducted as provided for the annual township meetings; and when so organized the board of education shall submit the proposition for the establishment of such school, with the reasons for the same, together with a carefully prepared estimate of the cost; and if, after full deliberation and discussion, two-thirds of the qualified voters present and voting, shall decide in favor of the proposition, such school shall be established, and the estimated additional cost shall be added to the next annual assessment for school purposes within the district, and the board of education shall proceed to put such school into operation.

What branches taught in union schools.

10. Such school shall be for the benefit of all the white inhabitants of the township, and shall be kept by a competent teacher or teachers (having a number one certificate,) of good moral character, who, in addition to the branches of learning prescribed for the primary schools, shall be capable of giving instruction in book-keeping, algebra, geometry and surveying, with such other branches pertaining to the natural sciences and general literature, as the board of education may determine.

Powers of board respecting union schools.

11. In regard to such union schools, the boards of education shall be invested with the same powers, and perform the same duties, as are required of the trustees of the school districts in reference to the primary schools, so far as these are applicable. They shall determine the ages and qualifications of the scholars to be admitted into them, and the length of time they are to be kept in operation during the year, and admit scholars not residents of the township who possess the requisite qualifications, at a rate of tuition not exceeding five dollars per quarter, and shall report separately to the county superintendent all such facts in regard thereto, as will be necessary to form a just estimate of the state of education within their township.

On what condition state school fund to be distributed.

12. No school district shall receive its share of the state fund for the support of free schools, unless the report required to be made by the trustees thereof shall first have been filed in the office of the county superintendent, within the time prescribed by law, and the levy required in section thirteen shall have been made.

Township levies for school purposes.

13. The board of education of each township of the state shall submit to a meeting of the qualified voters of their township, at the regular annual township meeting, or at one called for the purpose, an estimate, as near as practicable, of the amount of money necessary for the purpose of prolonging the schools in the districts after the state funds have been exhausted, so that free schools shall be continued in every district for the term of six months, at least, in each year; and said meeting shall assess an amount of tax to be levied for such purpose, not less than two or more than five mills on each dollar, according to the valuation of the taxable property of the township. The minutes of the meeting shall be recorded and preserved in the

record book of the township board of education. And the rate per cent so decided upon, the board shall make known by certificate in writing, within ten days, including any tax which may have been voted by a special meeting for the establishment of high schools, as provided in the tenth section, to the assessor, who shall extend the entire amount of such assessment, together with other township levies, and make a return thereof to the county superintendent, and such taxes so levied for school purposes, shall be collected as the state taxes are collected. In case any township shall refuse or neglect to levy the tax authorized in this section, the qualified voters of any school district of such township, on the call of six voters resident in said district, may meet and levy and collect in the same manner as is provided for township levies, from the inhabitants of their district, such amount after the state funds are exhausted, as may be required to continue a school at least six months in the year. Should a township reconsider its action, and levy a tax, any school district that may have levied a tax shall be credited with the amount levied.

District levies for school purposes.

School houses.

14. The boards of education, so soon as practicable after their township has been sub-divided as provided in the sixth section of this act, shall provide school houses in such locations as will best accommodate the majority of the inhabitants of such districts, and furnish them with such furniture and other appendages as are necessary to the comfort, health and progress of the pupils, and for this purpose they are hereby empowered to levy a tax of not more than seven mills on the dollar, on the taxable property of the township, which tax with the rate per cent, the board shall make known in writing to the assessor, who shall extend the same, as is required in the thirteenth section of this law, and such tax shall be collected as the state taxes are collected, and such commission allowed for collection as the board of education may determine, and the amounts so collected and paid over, together with all gifts, grants, donations and devises, which may be made for such purpose, shall constitute a building fund, to be exclusively appropriated to the purchase of sites for school houses, the construction and furnishing of the same, or for the rent, hire or repair of such property for the use of the free schools of the township. In case no board of education is elected, the state superintendent may appoint one.

Building fund.

Conveyance of school houses and sites now in use.

15. Wherever school houses, school house sites or other property are now held by trustees or others for the use of schools, the board of education of the township in which such property is held shall procure conveyance of the same for the use of free schools wherever practicable, and shall cause all such property to be valued by three disinterested persons not resident within the school district in which such property is located; and the amount of such valuation shall be credited to the school district in which such property is located, on their annual assessment for building purposes.

What school property shall be returned,

16. The boards of education, as soon as practicable after the passage of this act, and on a day to be appointed by the county superintendent, shall examine, in connection with the county superinten-

dent, all the school houses and school property within their township, and of which they may have received conveyance; and all such school houses as are conveniently and properly located, and are deemed sufficient or capable of being rendered so, shall be established as school houses of the respective districts within which they are located; and all houses which are inconvenient or improperly located, or insufficient or incapable of being rendered sufficient by a reasonable expenditure, shall be condemned and sold at public sale, the proceeds thereof being added to the building fund.

and what sold.

17. No school house shall be erected or repaired, unless the plan thereof shall have been submitted to the county superintendent and approved by him; and it is hereby made the duty of the county superintendent to acquaint himself with the principles of school house architecture, and in all his plans for such structures to have regard to economy, convenience and durability of structure. In order to aid the county superintendents in this branch of their duties, the state superintendent shall furnish, at the expense of the school fund, the office of each county superintendent within this state, with one copy of "Barnard's School House Architecture," or such other standard work upon the subject as he may prefer, such work to be kept in the office of the county superintendent for consultation and reference, and to be delivered by him to his successor.

Duty of county superintendent respecting school houses.

18. The boards of education of the several townships may borrow money for building purposes upon the credit of the building fund, but no greater amount of money shall be borrowed at any one time than the proceeds of the fund for five years would liquidate, nor shall the building fund of any township be pledged for any debt for a longer time than five years.

Boards of education may borrow money for building purposes.

19. When land has been designated by the board of education of any township as a suitable location for a school house and the necessary buildings, or for enlarging a school house lot, if the owner or owners refuse to sell the same, or demand a price therefor which is deemed by the board unreasonable, the board of education shall petition the circuit court of their county to have such lot of ground condemned for the use of public schools, and to appoint a jury of viewers, to consist of three discreet persons not resident within the district within which such land is located, who, being duly sworn or affirmed faithfully and impartially to try all matters submitted to them, shall assess the value of such land, and upon due return being made of such assessment, and the amount thereof being paid or tendered to the owner or owners of the land in question, the said board may enter thereon and use such land for school house purposes: provided, that no land shall be taken which shall exceed in quantity one acre.

Condemnation of land for school house sites.

20. All school houses, school house sites and other property for the use of free schools, shall be exempt from taxation, and also from sale on execution or other process in the nature of an execution. In order

School property exempt from taxation and execution.

to secure school property from injury, the trustees of the school districts shall bring suits for damages sustained, in the court of the county against the party or parties committing the act.

Establishment of schools.

21. The board of education shall take control of all the public schools within their district, in pursuance of which they shall be charged with the following powers and duties: They shall establish a sufficient number of free schools for the education and instruction of every individual resident within each school district, between the ages of six and twenty-one years, and all persons resident within the same who have been honorably discharged from the military or naval service of the United States, who may apply for admission and instruction, either in person or by parent, guardian or next friend, and such person so discharged shall be entitled to attend such school for the space of five years. The trustees of each school district shall appoint the teachers of the public schools within their district; shall fix the amount of teachers' salaries, and shall dismiss them at any time for incompetency, cruelty, negligence or immorality. They shall direct what branches of learning, in addition to those prescribed in the sixth section of this act, shall be taught in each school, and shall suspend or expel from any school any pupil found guilty, on full examination and hearing, of refractory or incorrigibly bad conduct. They shall visit the schools of their district within two weeks after the opening, and again within two weeks preceding the close of each school, and at such other periods as in their opinion the exigencies of each school may require; at which visits they shall examine the register of each teacher, and see that it is properly kept, and other matters touching the school house, furniture, fixtures, library, studies, discipline, mode of teaching, and improvement of the school; shall confer with the teacher in regard to its condition and management, and make such suggestions as in their view would promote the interest and efficiency of the school and the progress and good order of the pupils. The results of such visitation they shall cause to be entered on their minutes. They shall pay all necessary expenses of the schools by drafts upon the treasurer of the county, which drafts shall be signed by the trustees of the district, or any two of them, and an account of the same shall be entered by them in a book to be kept for the purpose. They shall annually, on or before the fifth day of September, in each year, make a report to the board of education, setting forth the number of schools within their districts; the number and condition of their school houses; the number of scholars in attendance during the year, and the average of daily attendance, distinguishing between male and female, white and colored; the length of time the schools have been kept open during the year; the amount of tax levied and collected for school purposes within their district during the year; the number of teachers employed, distinguishing between male and female; the averages of each per month, including board; the amount expended for building, repairing and furnishing school houses; the amount and value of apparatus and libraries

Soldier's privilege.

Duties of trustees in respect to teachers and their salaries,

branches taught,

visiting schools,

payment of expenses of schools,

and report to board of education.

belonging to their district for the use of the schools; and such other information as may be necessary and beneficial, in order to form a just estimate of the operation of the school system.

Drafts.

22. All drafts issued by school officers on the treasurer shall specify on what fund the draft is issued, whether the building fund, township levy, or the school fund, according to the blanks furnished by the state superintendent. The sheriff shall make an annual settlement with the county superintendent, of all accounts arising from the township and district levies for school purposes, on or before the fifteenth day of December.

Sheriff's settlement.

Per cent added to unpaid taxes.

23. On all taxes levied by township meetings, boards of education, or district meetings, for schools, or school houses, furniture or other school property, remaining unpaid sixty days after the sheriff receives the assessor's books, such per cent shall be added, (for collection thereof) as the board of education may determine. Ten days notice of the fact shall be given by the sheriff on receiving the aforesaid books.

Transfer of pupils from one district to another.

24. Whenever it shall happen that persons are so situated as to be better accommodated at the school of an adjoining district, whether in the same or an adjoining township or county, or whenever it may be desirable to establish a school composed of parts of two or more districts, it shall be the duty of the respective trustees of the districts in which such persons reside, or in which such schools may be situated, or of the districts or parts, of which the school is to be composed, to transfer such persons, for school purposes, to the districts in which such school house is or may be located; but the enumeration of youth shall be taken in each district as if no such transfer had been made; and such school when so composed, shall be supported from the funds of the respective districts from which the scholars may have been transferred; and the trustees of that district in which the school house is situated, shall have the management of such school; and the trustees of the districts so connected for school purposes, shall each make the proper estimates of their share of expenses of every kind necessary to sustain said school, and certify the same to the county superintendent as part of their annual estimates for school purposes, and draw orders on their respective county treasurers, for such sum as will be in proportion to the enumeration of youth so transferred, in favor of that district in which such school is located, to be appropriated to the payment of teachers, and for other purposes connected with the establishment or maintenance of such school.

Election and qualification of trustees.

25. The qualified voters of each school district shall, on the second Saturday of April next succeeding the formation of their district as provided in the sixth section of this act, and annually thereafter, meet and elect three trustees of schools, and transact such other business as may further the interests of schools in their district. The trustees so elected shall, within five days after they are notified of

their election by the secretary of the district meeting, take the several oaths required by law, which oaths the said secretary is hereby authorized to administer.

Schools for colored children.

26. The trustees of schools in their respective districts shall be, and they are hereby authorized and required, to establish within their respective jurisdictions, one or more separate schools for colored children, when the whole number by enumeration exceeds thirty, so as to afford them, as far as practicable under all the circumstances, the advantages and privileges of a free school education; and all such schools shall be under the management and control of the trustees; but in case the average attendance of colored children shall be less than fifteen for any one month, it shall be the duty of said school officers to discontinue said school or schools for any period not exceeding six months at any one time, and if the number of colored children shall be less than fifteen in attendance, or not exceeding thirty by enumeration, the directors shall reserve the money raised on the number of colored children, and the money so reserved shall be appropriated for the benefit of such colored children in such a way as the trustees shall think best: provided, colored children shall not attend the same school or be classified with white children.

Qualification of teachers.

27. No teacher shall be employed to teach in any of the public schools of this state, until he shall have presented to the trustees of the district in which he applies, a certificate, in duplicate, of his qualification to teach a school of the grade for which he applies, the duplicate copy of which shall be filed with the clerk of the township; and no salary shall be paid to any teacher unless such duplicate be filed as aforesaid.

School registers.

28. Every teacher shall keep a daily register of his school, in manner and form as prescribed by the state superintendent, blank forms of which register shall be furnished to every teacher by the trustees of the district, at the commencement of his term, and at the close thereof shall be deposited in the office of the township clerk, properly filled according to the instructions accompanying the same from the state superintendent, as a condition precedent to his receiving his salary. They shall, before entering upon their duties, take the oaths required of all officers of this state.

General duty of teachers.

29. All teachers employed in the public schools of this state, shall read or cause to be read at least one chapter from the Bible, in a language understood by the scholars, every day at the opening of the school; inculcate the duties of piety, morality and respect for the laws and government of their country; and all teachers, boards of education, and all other school officers created by this act, are hereby charged with the duty of providing that moral training for the youth of this state, which shall contribute to securing good behavior, and to furnishing the state with exemplary citizens.

30. On the day of the annual township election next ensuing, and every two years thereafter, on the day of said election, the voters of each county shall elect a county superintendent of free schools, whose term of office shall be for two years, to commence on the twentieth day of June succeeding said election; and he shall continue in office until his successor is elected and qualified. He shall, before entering upon the duties of his office, execute a bond before the recorder of his county, in the sum of five hundred dollars, with approved security; upon which bond he shall be liable in any court having jurisdiction, to any person or persons, or to any township board of education, for losses sustained by reason of his neglect, or non-performance of duties imposed by this act. Said bonds shall be filed in the office of the recorder, who shall within five days, certify to the general superintendent of free schools, the name of said county superintendent, and his post office address.

County superintendent, his election, term and bond.

31. The county superintendent shall be liable to removal or punishment by fine not exceeding fifty dollars, by the board of supervisors, for any palpable violation of law or omission of duty. But no such superintendent shall be removed or fined for such violation of law or omission of duty, unless charges thereof shall be preferred to the board of supervisors, and a notice of the hearing, with a copy of the charges delivered to such superintendent, and an opportunity given him to be heard in his defense. And when the office of county superintendent shall become vacant, the said board of supervisors shall fill the same by appointment, for the unexpired term; and the person so appointed shall give the requisite bond and hold his office until his successor be qualified.

How removed.

Vacancy in office.

32. The county superintendent shall examine all candidates for the profession of teacher, as to their competency to teach orthography, reading, writing, arithmetic, English grammar and geography, if the application is for a primary school; and if the application is for a union or central school, he shall examine the applicant as to his competency to teach the additional branches required for such school; and if satisfied of the competency and capacity of the applicant to teach and govern such school, and that he or she is of good moral character, he shall give a certificate in duplicate, accordingly. The county superintendent shall keep a register of all those to whom certificates have been awarded, stating the character and grade of certificate, and the time when issued. No certificate issued by a county superintendent, shall be of force, except in the county in which it was issued, nor for a longer period than one year; and the county superintendent may, with the consent of the trustees of the district in which he may be teaching, revoke the certificate of any teacher within the county, for any cause which would have justified the withholding thereof, when the same was granted, by giving ten days' notice to the teacher of his intention to revoke such certificate. The county superintendent may at stated periods hold public examinations, at which all the teachers of their respect-

Duty of county superintendent to examine teachers and give certificates ive counties may be required to attend, and upon the failure of any teacher to comply with this provision of the law, his certificate may be revoked.

County superintendent to visit schools.

33. The county superintendent shall visit all the schools within his county at least once every six months, and note the course and method of instruction, and the branches taught, and give such directions in the art of teaching and the method thereof, in each school, as to him shall seem necessary and expedient, so that uniformity in the course of studies and methods of instruction employed, shall be secured as far as practicable in the schools of the several grades respectively. He shall acquaint himself, so far as practicable, with the character and condition of each school, noting any deficiencies that may exist, either in the government of the school, the classification of its pupils or the method of instruction employed in the several branches, and shall make such suggestions, in private, to the teachers, as to him shall appear to be necessary to the good order of the school and progress of the pupils. He shall note the character and condition of the school houses, the sufficiency or insufficiency of their furniture and fixtures; and shall make such suggestions to the several township boards of education as in his opinion shall seem conducive to the comfort and progress of the pupils of the several schools.

Duty of county superintendent in respect to

county associations,

teachers' institutes,

addresses to the people,

and instructions of state superintendent.

34. It shall be the duty of the county superintendent to aid the teachers in all proper efforts to improve themselves in their profession. For this purpose he shall encourage the formation of county associations of teachers for mutual improvement; shall attend the meetings of such associations whenever practicable, and give such advice and instructions in regard to their conduct and management as in his judgment will contribute to their greater efficiency. In connection with the superintendents of adjoining counties, each county superintendent shall encourage the formation of teachers' institutes; shall attend and participate in the exercises of the same as far as practicable; and shall use all proper means to improve the efficiency of the teachers and to elevate their profession. He shall use all proper means to create and foster among the people an interest in free schools, and for this purpose shall, as far as practicable, take advantage of such public occasions as may present themselves, as the dedication of school houses, public examinations, and so forth, to impress upon the people the importance of public education, and the duty of sustaining the system of free schools as established by law. He shall at all times conform to the instructions of the state superintendent, as to all matters within the jurisdiction of the said superintendent, and shall serve as the organ of communication between him and the several township boards of education. He shall distribute from his office all blanks, circulars, copies of school laws, and other communications from the state superintendent, to the several boards and persons entitled to receive the same.

35. No county superintendent shall act as agent for any author, publisher or bookseller, nor shall directly or indirectly receive any gift, emolument or reward for his influence in recommending the use of any book or school apparatus or furniture of any kind whatever. Any act herein prohibited, shall be deemed a violation of his official oath; and any offer or solicitation to such an act shall be considered an attempt to bribe and corrupt a public officer.

Acts forbidden to county superintendent.

36. The county superintendents shall receive and revise the reports from the several township boards, and see that they are in proper form and according to the intent and spirit of the law, and where deficiencies exist, return them for correction. It shall be their duty to make out from these reports and from their own information, annually, on or before the thirtieth day of September, a report for each county, in tabular form, to the state superintendent, setting forth, under appropriate heads, the following items, viz: The number of schools in each district; the average number of months the schools have been taught during the year; the number of male teachers; the number of female teachers; the average salary per month of male teachers; the average salary per month of female teachers; whole number of youth within each district between the ages of six and twenty-one years; the number entered in the schools of the district; the average daily attendance, (distinguishing between males and females); amount levied within each district for the support of schools; amount levied for building purposes; amount received from state appropriation; cost of construction; fuel and contingencies; and amount expended for purchasing, renting, repairing and furnishing school houses. In addition to this report, it shall be the duty of the county superintendent to make out and transmit to the state superintendent a detailed report of the condition and character of the schools within his county, noting all deficiencies and suggesting their remedies, with such remarks upon the operation of the school laws as his experience and observation may have suggested, pointing out wherein he considers them as deficient, and what amendments may be required to render them efficient. He shall also report such townships in which the boards of education have failed to make return of the enumeration of youth as required in the sixth section of this act, and also those school districts that have failed to make the levy authorized in section fourteenth of this law.

Report of county superintendent.

37. In order to afford encouragement and incentive to teachers to perfect themselves in their profession, and at the same time to secure the profession from the intrusion of unworthy members, and the public from the evils of incompetent teachers, the following regulations shall be observed by county superintendents in regard to examinations and granting of teachers' certificates: *First*, No applicant shall be admitted to an examination unless the county superintendent shall have reasonable evidence that he or she is of good moral character, and loyal to the government of the United States and the government of the state of West Virginia. Profanity, obscenity and

Examination and certificates of teachers.

Good moral character and loyalty required.

Diploma disregarded.

intemperate habits, shall always be held to exclude from the privilege of an examination. *Second*, No college diploma or certificate, or recommendation from the president or faculty of any college or academy, shall be taken to supersede the necessity of examination by the county superintendent. *Third*, County superintendents shall grade the certificates granted, according to the following scheme, numbering them according to the merit of the applicant, from one to five. Number three shall be assumed as the medium between a very good and an indifferent teacher, so that the scheme will stand thus: Number one, a very good teacher—one accomplished in every respect; number two, a good teacher; number three, medium; number four, below medium; number five, indifferent. A number five certificate shall never be granted to any teacher more than once. If upon a second examination, the applicant is not found entitled to a higher grade, no certificate shall be granted. A number four certificate shall not be granted more than twice in succession to the same applicant. If, at the third examination, the applicant is not found entitled to a higher grade, no certificate shall be granted. When any teacher has received three number one certificates, he shall be entitled to receive from the county superintendent a recommendation to the state superintendent for examination, and, if found worthy, the state superintendent shall grant him a professional certificate in proper form, engraved upon parchment, authenticated by the seal of his office and attested by his signature thereto; by which certificate the bearer shall be legally admitted to the profession of teacher within the state of West Virginia, which certificate shall be valid throughout the state and during the life of the bearer thereof; provided, that the state superintendent may revoke such professional certificate for immorality or disloyalty, when clearly proven. For every professional certificate so granted, a fee of three dollars shall be charged, to be applied to the use of free schools. And it is further provided, that from and after five years from the passage of this act, no person shall be eligible to the office of county superintendent who shall not have received such professional certificate. And it is hereby made the duty of each county superintendent, on or before the first day of June in each year, to make out and transmit to the state superintendent, a list of all candidates examined by him during the year, stating their names and address, with the grade of certificate granted to each; from which the state superintendent shall make out and transmit to the county superintendents a general list containing the names, address, and grade of certificate of each person examined within the state during the year; which list shall be kept in the offices of the county superintendents for information and reference.

Certificates to be graded.

Examination and certificate by state superintendent.

Fee therefor.

Lists of certificates.

State school fund.

38. There shall be constituted a fund for the support of free schools, which shall belong in common to the people of the state, and which shall consist of all such sums as have accrued or may hereafter accrue to this state from any of the sources enumerated in the first section of the tenth article of the constitution; and it is hereby made the duty of the auditor, from and after the passage of

this act, and from time to time thereafter, as such sums may accrue to and be paid into the treasury of the state, to pass such sums of money to the credit of the free school fund; and the state of West Virginia is hereby pledged to pay the interest annually on all such sums of money as may have been paid into the treasury of the state from any of the sources above mentioned, at the rate of six per cent per annum. And it is further made the duty of the said auditor to open in a book to be provided for the purpose, an interest account with the said fund, in which shall be stated all items of interest accruing from said fund, from the time any principal sum was paid into the treasury, until the end of the fiscal year; which interest shall be distributed among the several counties of this state for the support of free schools as hereinafter provided.

Duty of auditor respecting it.

39. There shall likewise be distributed, according to the second section of the tenth article of the constitution, and in the manner herein provided, the net proceeds of all fines, confiscations and forfeitures accruing to this state under the laws thereof, together with the proceeds of a capitation tax of one dollar on each white and colored male inhabitant over twenty-one years of age, and such sum as may be produced by a tax of ten cents upon the hundred dollars valuation of all taxable property of the state at the last annual assessment; which tax shall be assessed and collected at the same time and in the same manner as other state taxes are assessed and collected. And the officer collecting such tax shall be allowed a commission thereon, at the same rate per cent as may be allowed by law for the collection of other state taxes; which taxes when so collected, shall be paid into the treasury of the state, to be distributed annually with other school funds herein described, to the several counties of the state in proportion to their enumeration of scholars.

Distribution of proceeds of fines and taxes.

Collection of school taxes.

40. It shall be the duty of the auditor, on or before the first day of April in each year, after deducting the salary of the state superintendent and all the necessary traveling and incidental expenses of his office, to apportion among the several counties of the state, the money remaining in the treasury for distribution for school purposes, according to the number of youth resident in each county of the state, between the ages of six and twenty-one years, according to the list furnished him by the state superintendent, and to notify the said superintendent of such apportionment, with the amount which each county is entitled to receive. The said superintendent shall thereupon draw his requisition upon the auditor in favor of the treasurers of the several counties, for such amounts as they are respectively entitled to receive, according to the apportionment of the auditor, and shall at the same time notify the several county superintendents of the amounts to which their several counties are entitled. And each county superintendent, upon receiving notification of the amount to which his county is entitled, shall, after deducting the amount of his own salary, apportion the remainder among the several districts of his county entitled thereto, according to the number of

Apportionment of school fund by auditor.

Requisitions drawn by state superintendent.

youth resident within the same, between the ages of six and twenty-one years, and shall notify the trustees of each district of the amount appropriated to their respective districts.

Salary of county superintendent.

41. The salary of the county superintendent shall be determined by the board of supervisors, who shall give a warrant on the treasurer of the county for the payment of the same out of the state school fund: provided, that his salary shall not be less than fifty nor more than five hundred dollars, and shall be in consideration of services as justice may require.

Duty of county treasurer in relation to school money.

42. The treasurer of the county shall be the treasurer of all money belonging to the schools in his county. He shall give bond in such amount as the board of supervisors may require. For his services he shall receive one per cent commission. He shall, annually, on or before the twentieth day of June, settle with the county superintendent, and account to him for all money received, from whom and on what account, and the amount paid out for school purposes in his county. The county superintendent shall examine the vouchers for such payments, and, if satisfied with the correctness thereof, shall certify the same; which certificate shall be a discharge of such treasurer; and, at the expiration of his term of service, said treasurer shall deliver over to his successor in office all books and papers, with all money or other property in his hands belonging to said county for schools therein, and also all orders he may have redeemed since his last annual settlement with the county superintendent.

Failure of treasurer to make annual settlement.

43. In case the county treasurer shall fail to make such annual settlement, within the time prescribed in the preceding section, he shall forfeit five hundred dollars, to be recovered before any court having jurisdiction in the name of the state of West Virginia, for the use of free schools in the county; and it is made the duty of the township clerk to proceed forthwith, in case of such failure, by suit against such treasurer to recover the penalty aforesaid; but when it shall appear on trial, to the satisfaction of the court, that said treasurer was prevented from making such settlement within the time prescribed, by sickness or unavoidable absence from home, and that such settlement has since been actually made, the court shall discharge such treasurer on the payment of costs.

School year and month.

44. The school year shall commence on the first day of September, and all reports, settlements, and so forth, shall be made in reference to that day. The school month shall be held to consist of twenty-two days in all contracts with teachers, and other operations of the boards of education; and no school shall be kept in operation for the purpose of ordinary instruction on any Saturday; but it shall be taken as part of the contract with every teacher, that two Saturdays of every entire calendar month during which the school may be in operation, shall be devoted by the teachers of each district to appropriate exercises for mutual improvement, under such regulations as the board of edu-

cation, under the instructions of the county superintendent, may designate. The first day of January, fourth day of July, twenty-fifth day of December, and all national and state festivals, shall be included in the school month.

State superintendent, his election.

45. The state superintendent shall be elected by a joint vote of both branches of the legislature. He shall hold his office for the term of two years, and until his successor is qualified. When a vacancy may occur in said office by death, resignation or otherwise, the governor shall fill the same by appointment, for the unexpired term.

and bond.

46. Before entering upon the discharge of his official duties, the said state superintendent shall give bond in the sum of three thousand dollars, with good security, which bond, with the certificate of his oath endorsed thereon, made and taken before the secretary of the state, shall be filed in the office of the treasurer of the state.

General duties of state superintendents.

47. The state superintendent shall be charged with the general supervision of all county superintendents and all the free schools of the state; and shall see that the school system is, as early as practicable, carried into effect and put in uniform operation. He shall prescribe and cause to be prepared all forms and blanks necessary in the details of the system so as to secure its uniform operation throughout the state; and shall cause the same to be forwarded to the several county superintendents, to be by them distributed to the several persons entitled to receive the same. He shall decide, upon a written statement of the facts, all questions and controversies arising out of the interpretation and construction of the school laws in regard to the rights, powers and duties of township boards of education, school trustees and county superintendents, and shall keep a record of all such decisions. He shall cause as many copies of this act and all other school acts in force, with the above decisions appended thereto, with such forms, regulations and instructions as he may judge expedient, thereto annexed, to be from time to time published, as he may deem expedient; and shall cause the same to be forwarded to the county superintendents, to be by them distributed to the persons entitled to receive them.

To convene county superintendent.

48. He shall, at the time and place to be appointed by him, convene the county superintendents within each judicial circuit of the state once in each year, for the purpose of conference upon the interests of education within their several jurisdictions, and giving such instructions and making such suggestions in regard to the discharge of their several duties as to him may seem expedient, and as the interests of education may seem to require. He shall take advantage of such meetings to address the people on the subject of education, and in exposition of the system of free schools as established in this state.

To perfect school system.

49. It shall be the duty of the state superintendent to aim at perfecting the system of free schools as established in this state; and for this purpose it shall be his duty to correspond with educators and school officers abroad, to acquaint himself with the various systems of free schools established in other states and in other countries, to collate their results as exhibited in the reports of their several superintendents, and to use all efforts and means which will be necessary to enable him to render available to the purposes of the legislature, the combined results of the experience of other communities, with his own experience and observation. He shall acquaint himself intimately with the peculiar educational wants of each section of the state, and shall take all proper means to supply them, so that the schools shall be as nearly as possible equal and uniform in grade throughout the state. He shall acquaint himself with the different systems and methods of instruction which may be introduced among educators, and shall explain and recommend such as experience and sound principles of education may have demonstrated to be valuable; and, generally, it shall be his duty to endeavor to render available to the people of this state all such improvements in the system of free schools, and in the methods of instruction, as may have been tested and proved by the experience of other communities and the best educators abroad.

Reports of state superintendent.

50. He shall, annually, on or before the thirty-first day of March, report to the auditor the number of persons between the ages of six and twenty-one years in each county in the state, also all township boards which have failed to make the enumeration required in the sixth section of this act; and shall, at each session of the legislature, make a report to the same in regard to the condition of free schools within the state, embracing all statistics compiled from the reports of the county superintendents, which will be necessary to give a proper exhibition of the working of the system, together with such plans as he may have matured for the management and improvement of the free school fund, and for the better and more perfect organization and efficiency of free schools, and likewise all such matters in relation to his office and to the free schools as he may deem it expedient to communicate.

His office.

51. The state superintendent shall have his office at the seat of government, where a suitable office shall be provided for him, supplied with the necessary furniture and fixtures, and provided with such blanks and stationery as the business of the office may require.

Seal of department.

52. He shall provide a seal with a suitable device for the department of free schools, and copies of papers deposited or filed therein and all official acts and decisions may be authenticated under said seal, and when so authenticated, shall be evidence equally and in like manner with the originals. He shall sign all requisitions on the auditor for the payment of such money to the treasurers of the several counties for the use of the free schools as they may be entitled

Disbursement of school funds.

to receive from the state; and for all other money to be paid out of treasury of the state for school purposes. The state superintendent of free schools shall prescribe a series of class books to be used in the free schools throughout the state. Uniformity of class books.

53. He shall receive annually, the sum of one thousand five hundred dollars, in payment of his services, to be paid quarterly out of the school fund, upon the warrant of the auditor. Salary.

54. The governor, auditor, treasurer, secretary of the state and the general superintendent of free schools, shall be a corporation under the name of "The Board of the School Fund," and shall have the management, control and investment of said fund, under the first section of the tenth article of the constitution. Board of school fund.

55. The governor shall be the president of the board, and in his absence the board may choose one of their number to officiate temporarily in his place. The auditor shall be the secretary of the board. A faithful record shall be kept of all their proceedings, and a copy thereof certified by the secretary of the board, shall be evidence in all cases in which the original would be. Its officers.

56. A meeting of the board may be held at any time, upon the call of any member thereof, provided notice be given to all the members who may be at the seat of government. The auditor's office shall be the place of meeting, and the proceedings shall be signed by the president of the meeting for that day, and shall be open to inspection at all times. Its meetings and proceedings.

57. All money which ought to be paid into the treasury to the credit of the school fund shall be recoverable with interest, by action or motion, in any court having jurisdiction; and the auditor shall institute and prosecute said action or motion when thereto directed by the board. Recovery of money due school fund.

58. The board may appoint agents for the collection of debts or claims, and authorize them to secure payment thereof, and protect the interests of the school fund, on such terms as it may approve. They shall take bond from said agent if any money is to come into his hands; and any agent selling lands when directed to do so by the board, shall execute a deed (with the resolution giving such direction thereto annexed,) conveying to the purchaser by special warranty. Said agent may be allowed by the board a compensation not exceeding in any case five per cent on the money actually paid into the treasury. Appointment of agents to collect debts due school fund.

59. The board shall from time to time invest all the uninvested capital and interest of the school fund in interest-bearing securities of the United States, or of this state, as provided for in the constitution. Investment of school fund.

Duties of auditor as member of the board.

60. The auditor shall be the accountant of the board, exercising any of their powers, except that he shall not, without special authority entered upon the records of their proceedings, dispose of any property, or invest any money of the school fund. He shall place the securities in which said school fund is invested, in such depository for safe keeping as the board shall direct.

Auditor's annual report on the school fund.

61. The auditor shall, annually, before the first day of November, deliver to the governor and to the general superintendent of free schools, each, a report made up to the first day of October next preceding, of the condition of the school fund, with an abstract of the accounts thereof in his office; which report the general superintendent shall lay before the legislature in his next annual report to that body.

Receipt and disbursement of school fund.

62. All money belonging to the school fund shall be received into and paid out of the treasury, upon the warrant of the auditor. But no warrant for paying out such money shall be issued without the authority of the board.

Laws repealed.

63. All acts and laws heretofore existing in this state in any way inconsistent with the provisions of this act, are hereby repealed.

Wheeling exempt from provisions of this act.

64. The provisions of this act shall apply to the city of Wheeling and parts of townships connected therewith, only so far as the same may be in conformity with the provisions of an act to provide free schools for the city of Wheeling, passed March second, eighteen hundred and sixty-five.

CHAP. 75.—An ACT to provide for obtaining Grants for Lands where the entries are lost or destroyed.

Passed February 26, 1866.

Be it enacted by the Legislature of West Virginia:

Petition of claimant.

Any person claiming a right to have a patent issued to him on any entry in force on the twentieth day of June, eighteen hundred and sixty-three, when the record in the surveyor's office containing such entry is lost or destroyed, may file his petition under oath in the circuit court of the county in which he claims that the entry was made, in which he shall state the time as nearly as may be when the entry was made, give a description of the warrant on which made, state the quantity of land entered and give a particular description of the same. If the court shall be satisfied from such petition and affidavit, together with such other evidence as may be offered, that said petitioner is entitled to have his entry surveyed, it shall order the county surveyor, or, for good cause, some special surveyor, to survey the same. The survey shall conform to the law in force in relation to surveys. When the survey is completed it shall be returned to the court which ordered it to be made; the court, if it is satisfied that the survey is correctly made, and that the petitioner is entitled to

Court may order survey of entry.

Return of survey and order for grant thereon.

have a patent for the land as surveyed, shall order the survey to be recorded in the books of the surveyor of the county as other surveys are recorded, and shall order that the petitioner is entitled to have a grant issued to him on such survey. Copies of the orders made in the proceedings shall be forwarded to the secretary of the state, together with a plat and certificate of the survey. The affidavit required by section forty-three of chapter one hundred and twelve of the code of Virginia, second edition, must accompany the said plat and certificate of survey. A grant shall be issued on the plat and certificate of survey, if not caveated in the time fixed by law, in all respects as on other plats and certificates of surveys.

Issue of grant.

CHAP. 76.—An ACT to authorize the Board of Supervisors of Hampshire County to borrow money.

Passed February 26, 1866.

Be it enacted by the Legislature of West Virginia:

That the board of supervisors of the county of Hampshire is hereby authorized to borrow money, not exceeding twenty thousand dollars, at legal interest, for necessary county improvements, and issue and sell the county bonds to that amount.

CHAP. 77.—An ACT for the benefit of married women in insuring the lives of their husbands.

Passed February 26, 1866.

Be it enacted by the Legislature of West Virginia:

Married women allowed to insure lives of their husbands.

1. It shall be lawful for any married woman, by herself, and in her name, or in the name of any third person, with her assent, as her trustee, to cause to be insured, for her sole use, the life of her husband for any definite period, or for the term of his natural life; and in case of her surviving her husband, the sum or net amount of the insurance becoming due and payable by the terms of the insurance, shall be payable to her, to and for her own use, free from the claims of the representatives of her husband, or of any of his creditors; but such exemption shall not apply where the amount of premium annually paid out of the funds or property of the husband shall exceed one hundred and fifty dollars.

To whom insurance payable.

2. The amount of the insurance may be made payable, in case of the death of the wife before the decease of her husband, to his or her children, for their use, as shall be provided in the policy of insurance, and to their guardian, if under age.

CHAP. 78.—An ACT to regulate the Registration of Voters.

Passed February 26, 1866.

Be it enacted by the Legislature of West Virginia:

County board of registration.

1. There shall be appointed by the governor, from among the citizens most known for loyalty, firmness and uprightness, three persons for each county residing therein, who shall be styled the county board of registration, which board shall proceed to appoint one loyal and upright person, to be styled the registrar, for each ward of the cities and incorporate towns, and each township or district of such county. The registrar shall register the white male citizens in his ward, township or district, entitled to vote therein according to the provisions of this act, in the manner hereinafter provided; and the members of the said board, and the registrars, shall each, before entering upon the discharge of his duties, take the proper oath of office, passed November sixteenth, one thousand eight hundred and sixty-three, which oath, sworn to as aforesaid, shall be subscribed by the party and returned to and filed by, the recorder of the county. Each member of the said board, and each registrar, shall receive two dollars for each day occupied and required in discharging the duties of his office. Any vacancy in the county board or in the office of registrar, shall be filled as hereinafter provided, any two of said board having power to act and perform all the duties and functions of their office.

Township registrars.

Oaths and compensation.

Vacancies.

Registration books.

2. The governor shall cause to be prepared suitable books for the registration of the names of voters and facts required by this act, to be furnished to the county board of registration and by them distributed to the registrars of their respective wards, townships or districts. The books aforesaid shall be so arranged as to admit of the alphabetical classification of the names of voters, and ruled in parallel columns, on which shall be entered:—*First*, The name of the person registered. *Second*, Sworn. *Third*, Age. *Fourth*, The place of his birth. *Fifth*, The time of his residence in the ward, township or district. *Sixth*, Time of residence in the state. *Seventh*, If naturalized, the date of the papers, and the court by which issued.

Duty of registrar.

3. Before any registrar shall register the name of any person as a qualified voter, except as hereinafter provided, he shall be satisfied of his qualifications as heretofore provided by law, and if he has any doubt as to such person's loyalty, he shall administer to such person the following affidavit:

Affidavit of voter.

"——— township of ——— county, to wit.: I, A. B., do solemnly swear that I have not, since the first day of June, eighteen hundred and sixty-one, voluntarily borne arms against the United States, the reorganized government of Virginia or the state of West Virginia; that I have not voluntarily given aid, comfort or assistance to persons engaged in armed hostility against the United States, the reorganized government of Virginia or the state of West Virginia; that I have not sought, accepted, exercised or attempted to exercise, any office or appointment whatever, under any authority or pretended authority hostile or inimical to the United States, the reorganized government of Virginia or the state of West Virginia; that I will support the constitution of the United States and the constitution of this state; and that I take this oath freely, without any mental reservation or purpose of evasion."

Such affidavit shall be subscribed by the party and sworn to before the registrar, and returned with his books to the county board of registration, to be filed by such board: Provided, that no person who has heretofore volunteered in the military service of the United States, or of this state, and who has been, or may hereafter be, honorably discharged therefrom, shall be required to take the affidavit of voters provided by this act, or be rejected from registration on account of any disloyalty prior thereto; but any person presenting an honorable discharge from the United States military service, if qualified as heretofore provided by law, shall be registered as a qualified voter. And provided, further, that every person shall be registered who will be entitled to vote at the first election occurring after the registration, by reason of his arriving at twenty-one years of age before that time, or by reason of his having then resided for a sufficient length of time in his election district: provided that he is otherwise qualified according to the provisions of this section.

Registration of soldiers,

and of certain minors.

4. The registrar shall not allow the name of any foreign-born resident or citizen, qualified as aforesaid, to be registered unless his naturalization papers be produced and exhibited to him, and by him endorsed with the date of their exhibition, or upon satisfactory proofs that such person is naturalized, entering in the sixth column the facts and their sufficiency to constitute such person a voter: Provided that this section shall not apply to persons who came to this country under eighteen years of age, or to persons who have served in the armies of the United States, or of this state, and been or shall be honorably discharged therefrom.

Registration of foreign born citizens.

Proviso.

5. The registrar shall immediately upon receipt of notice of his appointment, proceed to register the names of all the qualified voters within his ward, township or district, in accordance with the provisions of this act, and shall have such registration completed on or before the fourteenth day of April, eighteen hundred and sixty-six, and it shall be the duty of the registrar to sit at some convenient place in his ward, township or district, on Friday and Saturday of every week, from the first Thursday in August to the third Saturday of September, inclusive, for the purpose of amending and correcting the said registration, and he shall give notice of the time and place of sitting at least ten days previous thereto, by posting printed notices in ten of the most public places in his ward, township or district, and the county board of registration may, if they deem proper, in a newspaper, if there be one in such county, publish the same.

Registration of voters.

Correction of registration.

6. The name of any person who is qualified, according to the provisions of this act, may be registered at any time after the said twentieth day of April, or after any other regular days appointed for

Same.

registering voters shall have passed, but not less than ten days before any election at which such person may desire to vote, by his application to the proper registrar.

Power of county board over sessions of registrars.

7. The county board of registration shall have power, whenever they deem it necessary or expedient, to change the times and increase or diminish the number of days on which the registrars of their respective counties shall sit for the pupose of amending and correcting the registration.

Copies of registrar books.

County board to examine books.

8. At least ten days preceding the next election after the registration of voters under this act, and at least ten days preceding any election thereafter, the registrar shall make out fair copies of his registrar books, one copy of which he shall lodge with the county board of registration, one copy with the board of supervisors, one copy of the registry books of each ward with the council of such city or town, and one copy with the inspectors of elections, at each of the polls in his ward, township or district. It shall be the duty of the county board of registration to examine such book; and if they are satisfied that any person has been registered who has been guilty of any of the acts enumerated in the affidavit contained in the third section of this act, or is in any way disqualified to vote, under the provisions thereof, it shall be the duty of the said board, upon proof of any such act or disqualification, to exclude the name of such person from the list of registered voters. But the party whose name is proposed to be excluded, shall have due notice of the time and place of taking the evidence to prove his disqualification, which evidence he shall have the right to rebut, and shall have his name restored to such list if improperly stricken therefrom.

Clerk of county board.

Review of registrar's decision.

9. The county board of registration may employ a clerk who shall be allowed as compensation, two dollars per day for each day such clerk may be actually and necessarily employed in such service. The board shall procure a book in which shall be accurately kept the minutes and proceedings of such board, the appointments and removal of registrars, and the review of any of their proceedings. Any person feeling aggrieved or dissatisfied with the action or decision of any registrar, may have the action or decision of such registrar reviewed and corrected by the board, according to the requirements of this act. For good cause shown, the board may remove any registrar in their county, and for official misconduct, disloyalty, or other cause, the governor may remove any member of the board. Vacancies occurring by such removal shall be filled as hereinbefore provided.

Duty of registrar to preserve order.

10. Every registrar shall preserve order at and in the vicinity of the place of registration, and may direct any disorderly person to be removed therefrom, and if necessary or proper, to be taken into custody and held until sunrise of the next day, or for any shorter time; which may be done by any constable of the township, or other person or persons designated by the registrar, upon his warrant or authority in writing. Any such offender, notwithstanding his having

Assistance therein.

been in custody as aforesaid, shall be liable to any penalty or punishment for his offense prescribed by law. And any person being thereto commanded by the written authority of the registrar, who shall fail or refuse to assist to the utmost of his power in whatever may be necessary or proper to prevent intimidation, disorder or violence at the place of registration, shall be guilty of a misdemeanor, and, on conviction thereof, shall be fined not less than five nor more than fifty dollars.

Punishment for illegal registration or rejection.

11. Any registrar who shall wilfully or maliciously reject from registration or register any persons contrary to the provisions of this act, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be fined not less than fifty nor more than one hundred dollars, ~~and be liable~~ to the party injured for damages; but no registrar shall be held liable for any mere error of judgment in the discharge of his duties.

No person to vote unless registered.

12. No person shall be allowed to vote at any election hereafter held in this state, after the first registration shall have been completed according to the provisions of this act, unless he shall have been registered as hereinbefore provided, and the inspector of every election shall allow only those to vote whose names shall appear on the registry books returned by the proper registrar; and any inspector or supervisor who shall violate any of the provisions of this act, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be fined not less than fifty nor more than two hundred dollars, or imprisoned not less than ten nor more than ninety days, or both at the discretion of the court, for every such offense.

Punishment of disobedient election officer.

Future appointment of registration officers.

13. Annually after the first appointment of officers under this act, they shall be renewed by appointment as hereinbefore provided, and each retiring officer shall transmit to his successor in office, all books, papers, documents and property belonging to his office.

Punishment for alteration of registration books.

14. Any officer or other person who shall change, alter, amend or destroy any books or lists of registration, shall be deemed guilty of a misdemeanor, and, on conviction thereof, forfeit and pay a fine not less than fifty nor more than two hundred dollars, or be imprisoned in the county jail not less than three nor more than twelve months.

Return of registry books after election.

15. As soon as the result of any election is determined at the polls, the inspectors shall return with their certificates, poll books and ballots, the registry books of such election, to the board of supervisors, unless it be a municipal election, in which case the inspectors of each ward shall return with the certificates, ballots and poll books, the registry book of such ward to the proper judges of such municipal election. The board of supervisors, the House of Delegates, the Senate and the Governor, and the final judges of any election, state, county, town or municipal, may examine the registry books of such election, and reject any returns that are contrary to the provisions of this act.

Punishment for obstruction of officer.

16. Any person who shall threaten, intimidate, disturb, obstruct or attempt in any manner to hinder any officer from the discharge of his duties as herein provided, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be fined not less than five nor more than one hundred dollars, or shall be imprisoned in the county jail not less than five nor more than ninety days for every such offense, at the discretion of the court.

County board, its duty, meetings and compensation.

17. It shall be the duty of the county board of registration to see that the provisions of this act are faithfully carried into effect, and for that purpose may hold meetings at any time they deem proper, but shall receive compensation for not more than ten days' service for the first year, and for not more than five days in any subsequent year.

Laws repealed.

18. Sections twenty-fifth and fifty-second of the act entitled "An Act to regulate elections by the people," passed November thirteenth, eighteen hundred and sixty-three, are hereby repealed.

How officers paid.

19. All officers performing service under the provisions of this act, shall receive their compensation as hereinbefore provided, and be paid out of the state treasury upon accounts verified by the affidavit of the claimant, and approved and certified by the circuit court of the respective counties.

Law repealed.

20. The act of the legislature of West Virginia, passed February the twenty-fifth, one thousand eight hundred and sixty-five, entitled "An Act to amend the laws relating to elections by the people," shall remain in force until the first registration of voters shall have been completed, according to the provisions of this act, when the said act of February twenty-fifth shall stand repealed. Provided any persons absent in the service of the United States or of this state shall be permitted to vote without registration under the laws now provided in such cases.

Proviso.

CHAP. 79.—An ACT for the relief of John B. Baumgardner.

Passed February 26, 1866.

Be it enacted by the Legislature of West Virginia:

Release from payment of money.

That John B. Baumgardner, collector of the county of Cabell for the years eighteen hundred and sixty-one and eighteen hundred and sixty-two, is hereby released from the payment of the sum of four hundred and ninety-six dollars, which was captured and taken from John M. Smith, his deputy as collector aforesaid.

CHAP. 80—An ACT to repeal a part of section 2 of chapter 58 of the code of Virginia.

Passed February 26, 1866.

Be it enacted by the Legislature of West Virginia:

1. So much of section two of chapter fifty-eight of the code of Virginia, of eighteen hundred and sixty, forbidding a director or

officer of one bank from acting as a director or officer of another, as is contained in the following words: "And if a director or officer of one bank or branch become a director or officer of another, the acceptance of the latter shall vacate the former," is hereby repealed. Officer of one bank allowed to act as officer of another.

2. All official acts of any director or officer of any national bank within this state, done by virtue of his being or having been a director or officer of any state bank, are hereby legalized, and all acts done by the said officers in any of the said state banks are also legalized. Acts of certain bank officers legalized.

CHAP. 81.—An ACT making an Appropriation to Robertson Cook.

Passed February 26, 1866.

Be it enacted by the Legislature of West Virginia:

The sum of seven hundred and thirty-two dollars and fifty cents is hereby appropriated, out of any money in the treasury not otherwise appropriated, to pay Robertson Cook for supporting and maintaining, in the county of Wyoming, since the twenty-first day of December, eighteen hundred and sixty-one, Charlotte Meadows, a lunatic. Appropriation.

CHAP. 82.—An ACT for the relief of Amos Samples, of Upshur county.

Passed February 26, 1866.

Whereas, Amos Samples, belonging to the militia of Upshur county, when in the discharge of his duty, under the order of the Governor, was wounded by a musket ball in the thigh, resulting in the amputation of his leg, and long confinement on account thereof: Therefore, Preamble.

Be it enacted by the Legislature of West Virginia:

1. That there shall be paid out of any money in the treasury not otherwise appropriated, two hundred and fifty dollars, to the said Amos Samples. Appropriation.

2. Such sum shall be paid by order of the governor to the said Amos Samples, or his heirs, and shall not be liable to the payment of any debts contracted prior to the passage of this act. How paid.

CHAP. 83.—An ACT concerning the fiscal year.

Passed February 26, 1866.

Be it enacted by the Legislature of West Virginia:

1. The fiscal year shall hereafter commence on the first day of October, and end on the thirtieth day of September; and the fiscal year eighteen hundred and sixty-six shall end on the thirtieth day of September of said year. Commencement and end of fiscal year.

Law repealed.

3. Chapter forty-seven of the acts of eighteen hundred and sixty-five, is hereby repealed.

CHAP. 84.—An ACT constituting the bank of the Potomac river in Morgan county, a lawful fence.

Passed February 26, 1866.

Be it enacted by the Legislature of West Virginia:

Part of bank specified.

1. The south bank of the Potomac river in the county of Morgan, from the mouth of Cherry run to the mouth of Stony run on the Jones farm on the Baltimore and Ohio railroad, in the limits of said county, is hereby constituted a lawful fence.

Fences not required.

Proviso.

2. The owners or occupiers of lands bordering on said river and within said county of Morgan, need not keep up fences along the bank of said river, except where public crossings or public roads running parallel therewith shall require it. Provided said landholders or occupiers put up or cause to be put up a continuous line of fence on the south side of the Baltimore and Ohio railroad between the points designated.

Commencement of act.

3. This act shall be and remain in force from and after the first day of April, eighteen hundred and sixty-six.

CHAP. 85.—An ACT to incorporate the Potomac and Piedmont Coal and Railroad Company.

Passed February 26, 1866.

Be it enacted by the Legislature of West Virginia:

Corporators.

Powers of corporation.

1. That H. G. Davis, T. B. Davis, W. R. Davis and W. J. Armstrong, of West Virginia, J. Philip Roman, of Cumberland, Maryland, James Boyce and R. G. Reiman, of Baltimore, Maryland, and such other persons as may become associated with them in the manner hereinafter provided, shall be and they are hereby constituted a body politic and corporate, by the name of "The Potomac and Piedmont Coal and Railroad Company," and by that name shall have succession, and have power to sue and be sued in any court whatever, and may have and use a common seal, and the same alter and renew at pleasure, and shall have all the powers, rights and franchises necessary and proper for the carrying on the mining of coal, the building of manufactories, saw mills or furnaces, the burning of brick, the manufacturing of lumber and the buying and disposing of the same, together with the right to buy and sell real estate, and for the transportation of coal and other products of its mines and property to market, and shall have power and authority to make and pass such by-laws, rules and regulations for the management and government of the affairs of said corporation and its officers, directors and agents, as may be deemed necessary or proper, which may also be amended, changed or repealed at any and all regular meetings of the stockholders of said company: provided, however, that such by-laws shall not be repugnant to any law of this state or of the United States.

Capital stock.

2. That the capital stock of said company shall not exceed the sum of five millions of dollars, to be divided into shares of one hundred dollars each, and shall be considered as personal property, and shall be transferable in such manner as may be provided by the by-laws of said company, and each share thereof shall entitle the holder thereof to one vote in all meetings of the stockholders of said company, to be given either in person or by proxy; and for the purpose of obtaining subscriptions to the said capital stock, books shall be opened under the direction of the said H. G. Davis, T. B. Davis, W. R. Davis and W. J. Armstrong, of West Virginia, J. Philip Roman, of Cumberland, Maryland, R. G. Reiman and James Boyce, of Baltimore, in the state of Maryland, or a majority of them, at such times and at such place or places as the persons who may act in that behalf shall deem expedient, and payment may be made for the whole or any part of such subscriptions, either in land or other property, or money, and if lands or other property, then at such price and valuation as may be agreed upon by those receiving such subscriptions, and in case the said company shall organize and proceed to act as a corporate body before a sufficient amount is subscribed to the said capital stock for the lawful purposes of said company, the president and directors of said company shall have power at any time thereafter, and as often as they may deem necessary, and without opening anew books of subscription, to receive further subscriptions to said capital stock, and to augment the same to such extent as may be authorized and fixed at any general meeting of the stockholders of said company, not to exceed five millions of dollars; and it may be lawful for all persons and bodies corporate or politic whatsoever, to become subscribers for and owners of the capital stock of said company.

Subscriptions.

President and directors.

3. That the affairs of said company shall be managed by the persons named in the first section of this act, who are hereby constituted directors of said company until directors shall be elected as hereinafter provided, and in case of the decease of one or more of said persons, or their refusal to act as directors, the remaining person or persons shall have power to select other persons as directors for the time being in their stead, and whenever an amount of the capital stock of said company shall be subscribed, sufficient, in the judgment of said directors to justify it in proceeding to the prosecution of its business, a general meeting of the subscribers to the stock of said company shall be held at such time and place as the directors for the time being may appoint, for the purpose of electing a president and directors of said company, to serve for one year thereafter, and until the next election shall be held, and subsequent elections for president and directors of said company, shall be annually held thereafter, at such times and places as the by-laws of said company may prescribe, and the said directors of said company shall have all the powers and authority given to them by this act, and such other power and authority not inconsistent with the provisions of this act, nor with the laws of this state or of the United States, as may be conferred on them by the resolutions and by-laws of said company.

Elections therefor.

4. That the directors of said company shall consist of such number not less than five nor more than ten, as the by-laws of said company may prescribe, all of whom shall be stockholders in said company, and the president and directors of said company shall have the power to appoint and remove all officers, servants and agents of the company, to manage and conduct all its business of every kind, to borrow money at any time and from time to time, for the use of the said company, and to execute, if deemed by them necessary and expedient, any deed or deeds of mortgage or trust as security for the payment and fulfillment of any or all of its debts, contracts or liabilities.

Powers of president and directors.

Meetings.

5. That all meetings of the stockholders of said company may be held at such place or places as the directors of said company may from time to time appoint; and all meetings of the president and directors of said company may also be held at any place or places which the president of said company may from time to time appoint; and in all meetings of the stockholders, a majority of said stockholders, and in all meetings of said president and directors, a majority of said president and directors, shall constitute a quorum for the transaction of business.

Construction and route of railroad.

6. That the said company be and the same is hereby invested with all and singular the rights, power and authority necessary to enable it to locate, construct and maintain such railroad or railroads as the directors may deem necessary for the convenient transaction of its business from any point on the line of the Baltimore and Ohio railroad along the waters of the north branch of the Potomac river, or any of its tributaries to any lands or mines owned by said company in the counties of Mineral, Grant, Tucker and Greenbrier, with the privilege of extending it to the town of Piedmont in the county of Mineral, and also with the privilege of making a connection with the Loudoun and Hampshire railroad or any other railroad, with the power and authority to build, construct and equip such lateral road or roads as may be deemed necessary for the purposes of this act, and with power and authority to charge and collect tolls on passengers and freight, and for these purposes the said company shall be and is hereby invested with all and singular, the rights, powers, immunities, franchises and privileges, for the surveying, locating and constructing of such railroad or railroads, and for the working, repairing, preserving and controlling the same, and the necessary vehicles and appurtenances thereto belonging, and every part thereof which the Baltimore and Ohio railroad company enjoys under the act incorporating said company and the acts amendatory and supplementary thereto, and subject to any of the laws of this state, as if the same were hereby expressly enacted.

Connections and lateral roads.

Location of road

7. For the purpose of laying out and locating their railway and branches, the president and directors, with their engineers and agents, shall have full power and authority to enter upon, and pass through and over any lands on the contemplated route, and to occupy the same so long as necessary for locating the said road. But the

said company, in locating the said railway, branches, depots or stations, shall not throw open any fences or enclosures on any land, or in any way injure the property of the owner or occupier, without his consent, or invade the dwelling house of any person, or any space within sixty feet thereof, without like consent. And when the line of the said way is located, if the owners of said lands or their agents, and the officers and agents of said company, cannot agree upon the value of such lands as the said company may deem necessary to use and occupy for their railway, depots, warehouses and stations, the said company may have and hold the said lands for their use, in the manner following, to-wit: The said company shall make out a particular description of said lands in writing, and file it in the office of the clerk of the circuit court of the county in which the lands are located, stating therein the sum they propose to pay therefor, and also file therewith a bond with securities to the satisfaction of the judge of the said court, conditioned to pay all that may be recovered against them as hereinafter provided; and thereupon they may enter upon and take possession of said lands and proceed at once to appropriate and use the same for the purposes designated in the said description; but in no case shall the amount of land for the track of said road exceed sixty feet in width, except in case of cuts or fills, when the width may be one hundred and twenty feet; and the party or his agent, owning the said land, may file with the said clerk of said court, his or her claim therefor, in which shall be stated the sum he or she may demand for said land; and the said court shall thereupon appoint five disinterested persons for the purpose of ascertaining a just compensation for the said land, any three of whom may act; and the sheriff after the said appointment is made shall summon the said viewers to meet on the said land at such time as he may appoint, giving at least ten days notice to the parties interested. And the sheriff shall administer an oath to the viewers, which he is hereby empowered to do, that they, and each of them, will fairly, impartially and honorably assess, fix and determine the amount said railway company shall pay for the use of said land, and return their report in writing under their hands and seals, setting forth the amount, if any, to be paid by the said railway company; which report shall be certified by the said sheriff; and on the first day of the next term of the court, the judge of the said court shall direct judgment to be entered upon said report, if no exception be taken and filed thereto by either party; but if exceptions be filed, the court shall decide according to the evidence before it; and after judgment is entered upon said report, the company shall hold said land by a good indefeasible title, subject only to the payment of the said judgment. The judge shall have power to determine and order which party shall pay the costs of such proceeding.

Injury to private property prohibited.

Condemnation of lands for use of railroad.

8. That nothing herein contained shall be construed to give to the said company banking privileges.

Company not to have banking privileges.

9. The legislature reserves the right to alter or amend this act, but such alteration or amendment shall not affect or impair the right of

Alteration of charter.

the creditors of the corporation to have the property and assets thereof applied in discharge of their respective claims, or of the stockholders to have the surplus which may remain after providing for the debts and liabilities of the corporation, distributed among themselves according to their respective interests.

CHAP. 86.—An ACT to amend an act to incorporate the town of Piedmont, in the County of Mineral (late Hampshire.)

Passed February 27, 1866.

Be it enacted by the Legislature of West Virginia:

Town incorporated.

1. That the town of Piedmont, in the county of Mineral, as laid out into lots, streets and alleys by the New Creek Company and Owen D. Downey, and as may hereafter be laid out into lots, streets and alleys, with the consent of the proprietors of adjacent lands, be and the same is hereby incorporated by the name of the town of Piedmont, and by that name shall have and exercise all the powers conferred upon towns according to the laws of West Virginia, and laws amendatory thereof, and be subject to the provisions of said laws, so far as not inconsistent with this act.

Officers of town.

2. The voters of said town who may have resided therein for six months next preceding an election, and who are qualified to vote for members of the general assembly, shall annually elect a mayor, six trustees (who shall compose the council, and a majority of whom may act,) and a sergeant and recorder. The said officers shall hold their offices until their successors are elected and qualified. The sergeant of said town, within the limits thereof, may act as a constable, and as such may exercise the same powers, perform the same duties and be subject to the same penalties, prescribed by the laws of West Virginia.

Mayor.

3. The mayor shall be *ex officio* president of the council, and shall have jurisdiction concurrent with a justice of the peace within the limits of the corporation, and especially in adjudication and enforcement of all cases arising under the corporation laws of said town.

Interference with railroads forbidden.

4. The authorities of said town shall not have power or authority to pass any by-law or ordinance or to do any act to prevent, obstruct or in any manner interfere with the passage through the streets of said town, of the Alexandria, Loudoun and Hampshire railroad, or any railroad which now is or may hereafter be authorized to pass through said town.

Powers of council.

5. The council shall judge of the returns by the sergeant of the election and qualifications of the persons returned, may fine members of their body for disorderly behavior, and with the concurrence of two-thirds expel a member; if any persons returned be adjudged disqualified, or expelled, or any vacancy occurring otherwise during the term

for which any of the said persons may have been elected, may be filled by the council by the appointment of any one eligible, for the unexpired term.

6. This act shall be in force from its passage, and may be repealed, altered or amended, at the pleasure of the general assembly. Alteration of charter.

CHAP. 87.—An ACT to authorize the Board of Trustees of the Presbyterian Church of Buckhannon to sell a certain lot.

Passed February 27, 1866.

Be it enacted by the Legislature of West Virginia:

That the board of trustees of the Presbyterian church of Buckhannon are hereby authorized to sell the lot of ground owned by said church, in the said town of Buckhannon, and invest the proceeds of said sale in other property for the use and benefit of said church.

CHAP. 88.—An ACT to amend and re-enact the 1st Section of Chapter 5 of the Acts of 1864.

Passed February 27, 1866.

Be it enacted by the Legislature of West Virginia:

Section one of chapter five of the acts of eighteen hundred and sixty-four, is amended and re-enacted so as to read as follows:

"In criminal and civil cases, jailors shall be entitled to charge the following fees: For receiving a person in jail when first committed, twenty-five cents; for keeping and supporting him therein for each day, fifty-five cents; for discharging him therefrom, twenty-five cents." Jailors' fees.

CHAP. 89.—An ACT to amend the law in relation to the competency of Witnesses.

Passed February 27, 1866.

Be it enacted by the Legislature of West Virginia:

1. No person shall be incompetent as a witness on account of race or color. None incompetent on account of race or color.

2. Section twenty of chapter one hundred and seventy-six of the code of Virginia, second edition, and all acts or parts of acts conflicting with the foregoing section, are hereby repealed. Laws repealed.

CHAP. 90.—An ACT to provide for the Sale of Real Estate returned delinquent for the non-payment of Taxes.

Passed February 27, 1866.

Be it enacted by the Legislature of West Virginia:

1. There shall be a lien upon all real estate for the taxes assessed thereon, and interest upon such taxes at the rate of six per centum, per annum, from the fifteenth day of December, in the year in which Lien for taxes.

the same may have been assessed; until the payment hereof. The auditor shall keep a record of all real estate returned delinquent for the taxes assessed thereon for the year eighteen hundred and sixty-five, and every year thereafter. Until a sale thereof, as hereinafter provided, any person may pay into the treasury the taxes on any such real estate, with interest thereon as aforesaid, and upon the presentation of the treasurer's receipt therefor, the auditor shall give to such person a certificate that the delinquent taxes on such real estate have been paid. For every such certificate, the person obtaining the same shall pay the auditor a fee of one dollar. The interest mentioned in this section shall not be charged on any tax on land not returned delinquent.

Payment of taxes to auditor.

Auditor to deliver lists of delinquent real estate to sheriffs.

2. In the month of May, June or July, in the year eighteen hundred and sixty-seven, and in one of those months every two years afterwards, the auditor shall cause to be delivered to the sheriff of each county, a list of the real estate therein, which has been returned delinquent for the non-payment of the taxes assessed thereon for the two preceding years, and on which the taxes remain unpaid; with a statement of the amount due for the taxes on each tract or town lot so returned, and for interest on such taxes, computed to the first day day of September, in the year in which such sale is to be made.

Lists of delinquent real estate in new counties.

3. When in the year eighteen hundred and sixty-seven, or any other year in which, by the preceding sections, the auditor is required to cause to be delivered to the sheriff lists of real estate returned delinquent for the non-payment of taxes, any new county shall have been formed, the assessors of the counties from which the same is formed, shall, as soon as practicable, furnish to the auditor lists of the real estate within the parts of such new county, taken from the several counties of which they are assessors, which has been returned delinquent since the last sale of delinquent lands in their respective counties, in order that the auditor may cause such lists to be delivered to the sheriff of such new county.

Sheriff's notice of sales.

4. Within twenty days after receiving such lists, such sheriff shall make out three copies thereof, and set up one of them at the front door of the court house, and the others at two of the most public places in his county. To each copy he shall subjoin a notice that the real estate therein mentioned, or so much thereof as shall be sufficient to satisfy the taxes on the same, with the interest, and commissions of five per cent to the sheriff, will be sold at public auction between the hours of ten in the morning and four in the evening, on the first day of a term of the circuit court held for his county in the succeeding September or October, or on the second Monday of one of those months, at the front door of the court house thereof, unless the said taxes, interest and commissions shall be previously paid. Such lists and notices shall be advertised for four successive weeks in some convenient newspaper, the expense of which shall be apportioned among the delinquents, according to the amount of taxes due by them respectively, and shall be added by the sheriff previous to the sale.

Advertisement of same.

Sales.

5. If the said taxes, interest and commissions, and a due proportion of said expense, be not previously paid, the said sheriff shall proceed to make sale accordingly, and the sale may be continued from day to day, between the hours aforesaid, until completed. The sale of the tracts of land and the town lots shall be of each tract, and the town lot separately, or of such quantity or part thereof as shall be sufficient to satisfy the taxes, with the interest, commissions and the proportionate expenses, as aforesaid.

Sheriff not to purchase.

6. If the sheriff or collector conducting the sale shall directly or indirectly purchase any real estate so sold, he shall forfeit fifty dollars for every such purchase, and the sale shall, moreover, be absolutely void.

Receipt for purchase money.

7. The sheriff on receiving from any purchaser the amount of purchase money, shall grant to him a receipt for the same, to the following effect: "Memorandum of real estate within the county of ———, sold this ——— day of ———, eighteen hundred and ———, for the non-payment of taxes thereon for the year ———.

Name of the person charged with taxes.	Quantity of land charged.	Local description of land.	Amount of taxes due.	Quantity of land sold.	Name of purchaser.	Amount of purchase money.

Received of ———, the sum of ———, being the amount of purchase money for the land mentioned in the above memorandum.

———, Sheriff ——— County."

Sheriff's fee therefor.

8. For every receipt made out according to the said form, and signed by the sheriff, he shall be entitled to receive from the purchaser twenty-five cents.

Sheriff's list of sales.

9. The sheriff shall, within twenty days after such sale, make out a list of the sales, with the following captions thereto: "List of real estate within the county of ———, sold in the month of ———, eighteen hundred and ———, for the non-payment of taxes thereon for the year ———." Underneath shall be the several columns with the captions mentioned in the seventh section, and there shall be an additional column showing the date of each sale, unless the sales were all made in one day, in which case the day may be mentioned in the caption.

Sheriff's oath.

10. Subjoined to the said list shall be the following oath:

"I, ———, sheriff (or deputy for ——— sheriff,) of the county of ——— do swear that the above list contains a true account of all the real estate within my county which has been sold by me during the present year for the non-payment of the taxes thereon for the year ———, and that I am not directly or indirectly interested in the purchase of any of the said real estate, so help me God." Which oath shall be subscribed and taken before some person authorized to administer oaths.

Return of same.

11. The said lists, with a certificate of the said oath attached thereto, shall be returned to the recorder of the county in which such sale shall have been made, who shall file the same in his office and certify a copy thereof to the auditor within twenty days after receiving the same.

Right of redemption.

12. The owner of any real estate so sold, his heirs or assigns, or any person having a right to charge such real estate for a debt, may redeem the same by paying to the purchaser, his heirs or assigns, within two years from the sale thereof, the amount for which the same was so sold, with such additional taxes thereon as may have been paid by the purchaser, his heirs or assigns, with interest on the said purchase money and taxes, at the rate of twenty per centum per annum from the times that the same may have been so paid.

Payment of redemption money.

13. What is authorized by the preceding section to be paid may be paid within two years to the recorder of the county in which such real estate was sold, in any case in which the purchaser, his heirs or assigns, may refuse to receive the same, or may not reside, or cannot be found within the county.

Survey where part of tract sold.

14. The purchaser of a part of any tract of land so sold and not redeemed within the said two years, his heirs or assigns shall have the quantity surveyed and laid off at his or their expense, by the surveyor of the county; or, where there shall be no county surveyor, then by a person to be appointed for the purpose by the board of supervisors: the said survey to commence on either of the lines of the tract, at the option of the purchaser, his heirs or assigns, so as not to include the improvements on the same, (if it can be avoided) and to be in one body, the length whereof shall not be more than double the breadth, when that is practicable. A plat and certificate of the survey shall be returned to the recorder, and if, upon examination thereof, he shall find it to be correctly made in conformity with this section, he shall record the same.

Report where entire tract sold.

15. When also an entire tract of land is so sold and not redeemed, the purchaser, his heirs or assigns, at his or their expense, shall have a report made by the surveyor of the county in which the same may be situated, to the recorder thereof, specifying the metes and bounds of the land sold and the names of the owners of adjoining tracts, and giving such further description of the land as will identify the same, and the recorder shall record the report in his office.

Deed to purchaser.

16. After the expiration of the said two years, the purchaser of any real estate so sold and unredeemed shall obtain from the recorder of the county in which the same was sold, a deed conveying the same, in which shall be set forth all the circumstances appearing in the recorder's office in relation to the sale. If the sale be for a part of a tract of land, the deed shall refer particularly to the plat and certificate of survey returned according to the fourteenth section, and if the sale be of an entire tract, it shall refer to the report made

under the provisions of the fifteenth section of this act. If the sale be of a town lot or of an undivided interest in such lot, and a report be made by a surveyor describing the same, and such report be recorded, the deed shall refer to the said report; but when in the case of a sale of a town lot or an undivided interest in such lot, there is no such report, the recorder shall nevertheless execute a deed therefor to the purchaser if he desire the same. For every deed executed under this section, the recorder shall be entitled to receive one dollar and fifty cents, which the purchaser shall pay him on delivery of the deed.

Purchase by recorder.

17. When the recorder is himself the purchaser, the deed for the real estate purchased by him shall be executed by the president of the board of supervisors.

Deed to assignee.

18. When the purchaser has assigned the benefit of his purchase, the deed may be made to such assignee upon the production of the receipt given by the sheriff making such sale, with the assignment of the purchaser duly acknowledged, attached thereto.

Deed to heirs.

19. If the purchaser shall have died, the recorder shall execute a deed to his heirs or assigns upon the production of the proper evidence that they are such heirs or assigns.

Right of redemption before deed is made.

20. If the deed, as provided in this act, be not made within six months after the expiration of the said two years, the former owner, his heirs or assigns, may, before the deed is made, redeem the land by paying such amount with such additional taxes and interest as is mentioned in the twelfth section of this act, and the costs of the survey or report, with the interests thereon, if any shall have been made.

Validity of deed.

21. When the purchaser of any real estate so sold, his heirs or assigns, shall have obtained a deed therefor according to the provisions of this act, and shall have caused the same to be recorded in the office of the recorder of the county in which such real estate may lie, such estate shall stand vested in the grantee in such deed as was vested in the party assessed with the taxes (on account whereof the sale was made), at the commencement of the year for which such taxes were assessed, notwithstanding any irregularity in the proceedings under which the said grantee claims title, unless such irregularity appear on the face of the proceedings. And if it be alleged that the taxes for the non-payment whereof the sale was made were not in arrears, the party making such allegation, must establish the truth thereof by proving that the taxes were paid.

Redemption by persons under disability.

22. Any infant, married woman, insane person, or person imprisoned when such real estate may have been so sold, may redeem the same by paying to the purchaser, his heirs or assigns, within two years after the removal of the disability, the amount for which the same was so sold, with the necessary charges incurred by the purchaser, his heirs or assigns, in obtaining the title under the sale, and

such additional taxes as may have been paid by the purchaser, his heirs or assigns, and interest on the said items at the rate of ten per centum per annum from the time the same may have been paid. Upon such payment the purchaser, his heirs or assigns, shall, at the cost of the original owner, his heirs or assigns, convey to him or them, by deed, with special warranty, the real estate so sold.

Purchase by sheriff for the state.

23. When any real estate is offered for sale as aforesaid by the sheriff, and no person present bids the amount to be satisfied from the sale thereof, the sheriff shall purchase the same on behalf of the state, for the taxes thereon, and interest on the same, and its proportion of the expense of advertising. A list of the real estate so purchased by the state shall be made in the form prescribed in section nine, except that there shall be added to the caption thereof, the following: "And no person present having bid the amount to be satisfied from the sale thereof, was purchased by the sheriff on behalf of the state," and that the column for the "name of the purchaser," shall be omitted. The sheriff shall verify such list on oath before some person authorized to administer the same, and shall, within twenty days after such sale, deliver it to the recorder of his county, who shall certify the original list to the auditor after making a copy thereof, which copy he shall deliver to the assessor of the county, or if there be two assessors, then a copy to each of them, within sixty days after such list shall have been delivered to him by the sheriff. The list for the auditor he shall place in a sealed enclosure, directed to that officer, and deliver it to the sheriff within twenty days after the same shall have been received by him as aforesaid. Upon receiving the said list the auditor shall credit the sheriff with the amount for which the said real estate may have been so purchased, but not with any commissions thereon.

Sheriff's list thereof.

Record of lists.

24. The auditor shall cause all the lists received in his office, under the preceding section, to be recorded in a well bound book, and all the real estate mentioned in such lists shall, without any deed for the purpose, stand vested in the state.

Redemption of real estate purchased for state.

25. The previous owner of any real estate so purchased for the state, his heirs or assigns, or any person having a right to charge such real estate for debt, may, within five years after such sale, redeem the same by paying into the treasury the amount for which the same was so sold, with interest thereon at the rate of ten per centum, with such additional sums as would have accrued for taxes thereon if the same had not been purchased by the state, with interest on such taxes at the rate of ten per centum per annum from the fifteenth of December in the year in which the same would have accrued, and obtaining from the auditor such certificate and paying such fee therefor as is mentioned in the first section of this act. When real estate so purchased is redeemed, the auditor shall certify the fact to the proper assessor, who shall re-enter the same upon his land book.

Duty of auditor after receipt of lists.

26. Whenever all the lists of real estate returned delinquent for the non-payment of the taxes assessed thereon, for the years eighteen hundred and sixty-one, eighteen hundred and sixty-two, eighteen hundred and sixty-three and eighteen hundred and sixty-four, in any county in which the same has not been sold for said years, shall have been received by the auditor, he shall, in the months of May, June or July, next after the last of such lists is received, cause to be delivered to the sheriff of the county in which the taxes were assessed, a list of such real estate on which the taxes remain unpaid and not exonerated by article nine of the constitution, and the said sheriff shall proceed to sell and make return of the same according to the provisions of this act.

Duty of sheriff after sale.

27. The real estate embraced in the lists which the auditor shall cause to be delivered to any sheriff, shall be deemed to be sold when delivered, and the proceeds thereof shall be deemed at least equal to the sums to be satisfied therefrom, and the sheriff shall be debited with the same, and he shall, within six months after the delivery of said lists, pay into the treasury the sum due the state, after crediting him with the list mentioned in the twenty-third section of this act. But a sheriff whose court house is more than one hundred and fifty miles from the seat of government, shall be allowed an additional day for every thirty miles of such excess. On such sums as he shall pay into the treasury within the time prescribed, every sheriff shall be entitled to receive a commission of five per centum.

Duty of auditor five years after purchase for the state.

28. At the expiration of five years from the time such real estate shall have been purchased by the state as aforesaid, or at the sales thereof, made in the year eighteen hundred and sixty-five, the auditor shall certify and transmit to the clerk of the circuit court for the county in which the same may lie, a list of all such real estate upon which the taxes and interest and expenses of sale, as aforesaid, remain unpaid, and proceedings shall be had thereon according to the provisions of chapter ninety-two of the acts of eighteen hundred and sixty-five.

Fees of recorder.

29. For services rendered by the recorder under this act, he shall be entitled to receive the same fees as for similar services in other cases.

Failure of officer in his duty.

30. Any officer failing to perform the duties required by this act, shall forfeit for each failure not less than ten nor more than two hundred dollars.

Meaning of word "sheriff."

31. The word "sheriff," wherever it occurs in this act, shall be held to include and mean any collector or other person duly authorized to perform the duties of sheriff.

Laws repealed.

32. Chapter thirty-seven of the code of Virginia, second edition, and chapter fifty-four of the acts of the general assembly of Virginia, passed February fourth, eighteen hundred and sixty-two, are hereby repealed.

Redemption of lands sold in 1865.

33. Lands sold in the year eighteen hundred and sixty-five, for non-payment of taxes, shall be redeemed according to the provisions of this act, and if not so redeemed, conveyances shall be made to the purchasers thereof, according to the provisions of this act.

CHAP. 91.—An ACT in relation to the Statutes of Limitation.

Passed February 27, 1866.

Be it enacted by the Legislature of West Virginia:

Certain time excluded from computation in certain counties.

In computing the time within which any civil suit or proceeding in trespass or case shall be debarred by any statute of limitation in the counties of Pendleton, Hardy, Grant, Monroe, Wayne, Putnam, Calhoun, Gilmer, Kanawha, Doddridge, Harrison, Upshur, Marion, Taylor, Lewis, Hampshire, Mineral, Greenbrier, Boone, Logan, Wyoming, McDowell, Mercer, Raleigh, Pocahontas, Webster, Clay, Nicholas, Fayette, Cabell, Morgan, Jefferson, Berkeley and Roane, the period from the first day of March, eighteen hundred and sixty-five, to the date of the passage of this act, shall be excluded from such computation.

CHAP. 92.—An ACT establishing and re-arranging the Tenth and Eleventh Judicial Circuits of this State, and providing for the appointment of a Judge of the Eleventh Circuit.

Passed February 27, 1866.

Be it enacted by the legislature of West Virginia:

Tenth circuit.

1. The counties of Jefferson, Berkeley and Morgan, shall hereafter constitute the tenth judicial circuit.

Eleventh circuit.

2. The counties of Hampshire, Pendleton, Hardy, Grant and Mineral shall hereafter constitute the eleventh judicial circuit.

Appointment of judge for eleventh circuit.

3. It shall be the duty of the governor, as soon after the passage of this act as practicable, to appoint a judge for the eleventh circuit, who shall hold his office until his successor is elected and qualified. An election for a judge of said circuit shall be held therein at the next annual election for members of the legislature.

CHAP. 93.—An ACT fixing the times of holding the Courts in the several Counties of the Tenth and Eleventh Judicial Circuits.

Passed February 27, 1866.

Be it enacted by the Legislature of West Virginia:

Tenth circuit.

1. The commencement of the terms of the circuit courts in the several counties of the tenth judicial circuit shall hereafter be as follows:

For the county of Morgan, on the second Monday of March, May, September and November. Morgan.

For the county of Berkeley, on the third Monday of March, May, September and November. Berkeley.

For the county of Jefferson, on the second Monday of April, June, October and December. Jefferson.

2. The commencement of the terms of the circuit courts in the several counties of the eleventh judicial circuit shall hereafter be as follows: Eleventh circuit.

For the county of Hampshire, on the first Monday of March, May, September and November. Hampshire.

For the county of Hardy, on the third Monday of March, May, September and November. Hardy.

For the county of Pendleton, on the first Monday of April, June, October and December. Pendleton.

For the county of Grant, on the second Monday of April, June, October and December. Grant.

For the county of Mineral, on the third Monday of April, June, October and December. Mineral.

CHAP. 94.—An ACT to incorporate the North West Virginia Agricultural Society.

Passed February 27, 1866.

Be it enacted by the Legislature of West Virginia:

1. That Curtis P. Brown, William F. Peterson, jr., James C. Orr, John K. Botsford, Thomas P. Shallcross and Alexander Laughlin, and their associates, be and they are hereby created a corporation by the name and style of "The North West Virginia Agricultural Society," so soon as they shall in all things comply with and fulfil the terms of the act entitled "an act providing for the formation of corporations and regulating the same," passed October twenty-sixth, eighteen hundred and sixty-three, and shall have obtained the certificate of the secretary of the state, mentioned in the ninth section of the said act. When incorporation to take effect.

2. The only purpose and object of the said corporation shall be to advance and improve the condition of agriculture, horticulture, floriculture, stock and domestic animals, and the manufacturing, mechanical and mining arts, with such additional and other objects as may be advantageously connected therewith. Object of corporation.

3. The said corporation shall be authorized to purchase and hold not exceeding twenty acres of land, within the limits of the city of Wheeling, and should said purchase be made upon Zane's Island, of the land heretofore and for many years occupied by "The Virginia Northwestern Agricultural Society," and commonly known as the "Fair Grounds," the streets and alleys intersecting the same, if any there be, shall be and the same are hereby vacated. Purchase of land. Vacation of streets.

CHAP. 95.—An ACT to charter a road in Gilmer, Ritchie and Tyler counties.

Passed February 27, 1866.

Be it enacted by the Legislature of West Virginia:

Route of road. 1. That a road leading from the Staunton and Parkersburg turnpike road, at or near the forks of Horn creek in the county of Gilmer, by way of Pennsboro, in the county of Ritchie, to the mouth of Big run, on Middle Island creek, in Tyler county, is hereby chartered.

Grade. Capital stock. 2. The grade of said road shall not be over five degrees, and not less than twelve feet wide, between the ditches. The capital stock of the company shall be thirty thousand dollars, in shares of ten dollars each; that they shall have power to organize when one thousand dollars shall be subscribed.

Commissioners. 3. The following commissioners are authorized to open books and keep them open as the law requires, at such places as they may think best, and to employ engineers, &c., and to proceed as the law directs; Philip Cox, Andrew Law, George Pritchard, Archibald C. Bernard, Martial M. Martin, David A. McGinnis and Daniel Haymond.

CHAP. 96.—An ACT concerning cases transferred from the Supreme Court of Appeals and District Courts of Virginia, to the Supreme Court of Appeals of West Virginia.

Passed February 27, 1866.

Be it enacted by the Legislature of West Virginia:

Further time for docketing cases allowed. 1. That further time, until the close of the first term of the supreme court of appeals of this state, to be held in the year one thousand eight hundred and sixty-seven, be given to the appellants or plaintiffs in error in cases pending in the supreme court of appeals of Virginia, and the district courts thereof, on the nineteenth day of June, one thousand eight hundred and sixty-three, and which were transferred to the supreme court of appeals of West Virginia by an act entitled "An act defining the jurisdiction and power of the supreme court of appeals, and the judges thereof," passed July twentieth, one thousand eight hundred and sixty-three, to procure and deliver to the clerk of the supreme court of appeals of this state, proper copies of the records in said courts, and to cause them to be docketed in said court last mentioned: Proviso. provided, however, that nothing in this act contained shall be construed to apply to any case which shall have been heretofore dismissed by the said court of appeals of this state, for the failure of the appellant or plaintiff in error therein to comply with the provisions of the act above mentioned, and such dismission certified to the circuit court in which the judgment, decree or order complained of was ordered or made, but such dismission shall remain in force and have the same effect as if this act had never been passed.

2. If the appellant or plaintiff in error in any cause so pending as aforesaid, in either of the courts heretofore mentioned on the day above named, shall fail to procure and deliver to the clerk of the supreme court of appeals a proper transcript of the record thereof, and cause the same to be docketed in the supreme court of appeals within the time limited and allowed by this act, it shall be the duty of said court, at any time thereafter, upon the motion of the appellee or defendant in error, to cause the said cause to be entered dismissed upon the record, with or without cost as may to the court appear just and proper, and to certify such dismission to the circuit court in which the judgment, decree or order complained of was rendered or made.

Dismission of cause on failure to so docket.

CHAP. 97.—An ACT for the relief of State and Home Guards.

Passed February 27, 1866.

Whereas, during the rebellion, in many counties of this state, rebel guerrillas and horse thieves were sheltered and aided by resident sympathizers while in their lawless excursions, and, whereas, the said sympathizers, after being remonstrated with, still continued to connive at and abet such guerrillas in their lawless raids, it became necessary to institute retaliatory measures, and there was a levy made against said sympathizers, to indemnify union men for property which was stolen and destroyed by said guerrillas, which levy was collected and applied by and through the state or home guards, for such purpose, all of which was done in good faith, that such levy and collection was in accordance with orders issued by the military commanders of the department, and whereas, now that the war is over, said sympathisers have now come into our courts and brought suits against the collectors and distributors of said levies and indemnities; Therefore,

Preamble.

Be it enacted by the Legislature of West Virginia:

1. No suit or action shall be maintained in the courts of this State, against any person for any act done in the suppression of the late rebellion; and it shall be a sufficient defense to such suit or action to show that such act was done in obedience to the orders, or by the authority of any civil or military officer of this state, of the reorganized government of Virginia, or the government of the United States; or that said act was done in aid of the purposes and policy of said authorities, in retarding, checking and suppressing the late rebellion.

No suit to be maintained for acts against the rebellion.

2. All suits brought, or that may hereafter be brought, against the state or home guards to recover back the sum or sums collected as aforesaid and paid to the parties robbed as aforesaid, shall be dismissed at the plaintiffs' cost.

Dismission of suits.

CHAP. 98.—An ACT to amend and re-enact the Charter of the town of Sistersville, in the County of Tyler.

Passed February 27, 1866.

Be it enacted by the Legislature of West Virginia:

The charter of the town of Sistersville, in the county of Tyler, is hereby amended and re-enacted so as to read as follows:

Corporate limits.

1. The corporate limits and boundaries of the town of Sistersville, shall be as follows: Beginning at the Ohio river below the centre of Diamond street, thence up said river and with the same, eighty-four poles to a stone, thence south thirty-five degrees east, seventy-six poles to a stone, thence south forty-one degrees west, one hundred and fifty-four poles to a stone, thence north thirty-five degrees west, ninety-eight poles to said river, and up said river and along the same, sixty-five poles to the place of beginning.

Municipal authorities.

2. The municipal authorities of said town shall be a mayor, recorder and five councilmen, who together shall form a common council. They shall be elected by the citizens of said town entitled to vote under this act, for one year, unless chosen to fill a vacancy, and until their successors shall have been elected and qualified, and shall be residents of said town entitled to vote for members of its common council.

Corporation.

3. The mayor, recorder and councilmen, so soon as they have been elected and qualified, shall be a body corporate by the name of "The Town of Sistersville," and shall have perpetual succession and a common seal, and by that name may sue and be sued, may rent or purchase and hold real estate necessary to enable them to discharge their duties, and needful for the good order, government and welfare of said town. The corporate powers thereof shall be exercised by said council, or under their authority, except where otherwise provided.

Town officers.

4. There shall be a town sergeant, a treasurer and assessor appointed by the council, to continue in office during its pleasure, and perform the duties respectively, as hereinafter prescribed, or as may be required by said council.

Elections.

5. The first election under this act shall be held on the fourth Thursday in March, eighteen hundred and sixty-six, at the place in said town where the board of trustees meet, under the supervision of a justice of Lincoln township, and annually thereafter there shall be an election on the same day in each year, at such place and under such supervision as the council of said town may prescribe. The person conducting the first election, shall give a certificate of the persons elected, and deliver the same to the clerk of the board of trustees of said town, who shall notify the persons so elected of the same, and their term of office shall commence on the first Monday of April next after their election. Said certificate shall be entered on the records of said council.

6. All persons resident in said town, and entitled to vote for county and township officers, shall be entitled to vote for mayor, recorder and councilmen. At all elections the vote shall be by ballot, and when two or more persons for the same office at any election shall receive an equal number of votes, the person or persons conducting such election shall decide which of said persons shall be returned elected. And all contested elections shall be determined by the council for the time being, and when a vacancy shall occur from any cause in the office of mayor, recorder, or in the council, the vacancy shall be filled by appointment of the council.

Same subject.

How vacancies filled.

7. The mayor, recorder, councilmen, sergeant, treasurer and assessor shall each, before entering upon the duties of his office, and within ten days after notice of his election, make oath or affirmation before an officer authorized to administer oaths, as required of officers by the act of November sixteenth, eighteen hundred and sixty-three, that they will well, truly and impartially discharge the duties of their said offices respectively. The mayor having taken such oath or affirmation, may administer the oaths aforesaid to the other officers and councilmen. Certificates of said oaths or affirmations shall be recorded in the journal of the proceedings of the council; and where any four of the councilmen shall have been so qualified, they shall enter upon their said offices and supersede the former councilmen.

Oaths of officers.

8. If any one elected mayor, recorder or councilman shall not have been eligible, or shall fail or refuse to take the oath or affirmation required by this act, within the ten days aforesaid, or shall die or remove from said town, such office shall be declared vacant, and the vacancy filled as hereinbefore prescribed, but in all cases from the citizens of the town eligible to such office under this act.

How vacancies may occur.

9. The council shall be presided over at its meetings by the mayor, or in his absence by one of the councilmen, chosen by a majority of of the council present, and a majority of the council shall be necessary to constitute a quorum to do business. The council shall cause to be kept in a journal an accurate account of its proceedings, by-laws, acts and orders, which shall be open to the inspection of the voters of the town. The proceedings of the last meeting shall be read to the council, corrected when necessary, and signed by the person presiding for the time being. Upon the call of any member, the ayes and noes on any question shall be called and recorded in the journal. The mayor shall vote only in cases of a tie, and shall have the casting vote.

Council.

10. The council shall have power within said town to lay off, open, curb and pave streets, alleys, walks and gutters for the public use, and to alter, improve and to light the same, as well as the streets and alleys now open, and to have said streets and alleys kept in good order and free from obstructions on or over them; to regulate the width of the sidewalks and streets, and to order the sidewalks, footways and gutters to bs curbed, paved and kept in good order, free

Powers of council.

and clean by the owners or occupants of the adjacent property; to lay off public grounds and provide, contract for and take care of public buildings proper to the town; to prevent injury or annoyance to the public or individuals from anything dangerous, offensive or unwholesome; to abate or cause to be abated anything which, in the opinion of a majority of the whole council, shall be a nuisance; to regulate the keeping of gunpowder and other combustibles; to provide for the burial of the dead, and, for this purpose, may purchase and hold the land necessary for a cemetery, near or convenient to said town, and provide for its improvement and security; to provide for making division fences, and for shade and ornamental trees, and against danger or damage from fires or contagious diseases; to organize one or more fire companies, and provide buckets, hooks, ladders and engines, or any of them, for their use; to provide a revenue for the town and appropriate the same, and to provide the annual assessment of taxable persons and property of the town; to adopt rules for the government of its own body; to promote the general welfare of the town, and protect the property and preserve peace and good order therein; to appoint such officers as they may deem proper, including a sergeant, assessor and treasurer; to define their powers and prescribe their duties, fix their term of service and compensation, require and take from them bonds, with such surety and in such penalty as the council may determine, conditioned for the true and faithful discharge of their duties, (all bonds to be made payable to the town by its corporate name); to regulate and provide for weighing and measuring hay, coal and other articles sold or for sale in said town, and to regulate the transportation thereof through the streets, and, generally, to do such things as the council shall deem necessary for the interests, prosperity, peace and good order of the citizens of said town.

Same subject.

11. To carry into effect these enumerated powers and all others conferred upon the said town or its council, expressly or by implication, in this or any other acts of the legislature, the council shall have power to adopt and enforce all needful orders, by-laws and ordinances, not contrary to the constitution and laws of this state, and to prescribe, impose and enforce reasonable fines and penalties, including imprisonment for a term not exceeding thirty days, under the judgment and order of the mayor of said town, or the person lawfully exercising his functions. The council, with the consent of the supervisors of Tyler county, entered of record, may have the right to use the jail of said county for any purpose necessary in the administration of its affairs.

Annual levy.

12. The annual levy ordered by the council may be upon all male persons within said town over twenty-one years of age, and on all real and personal estate not exempt from state taxation, and all other subjects in said town as may at the time be assessed with state taxes; provided the tax do not exceed seventy-five cents on every one hundred dollars of the value of the real and personal property,

or one dollar per head on each taxable person. So much of the land within the corporate limits of said town, as shall be worked for farming purposes, exceeding one acre in an enclosure, shall be exempt from taxation by said council, during the year it shall be so used. **Certain lands exempted therefrom.**

13. When anything for which a state license is required is to be done within the said town, the council may require a town license to be had for doing the same, and may impose a tax thereon for the use of the town, and the council may in any case require from the person so licensed a bond with sureties in such penalty and with such condition as it may determine. **Licenses.**

14. The sergeant shall collect the town taxes, fines, levies and licenses, and after thirty days from the time he may receive the books of the assessor of said town, may distrain and sell therefor in like manner as a sheriff may for state taxes, and shall in all respects have the same powers as a sheriff to enforce the payment and collection thereof. He shall act as a conservator of the peace, quell all riots, disperse all unlawful assemblies, and arrest and bring before the mayor all disorderly persons. He shall execute all process issued by the mayor, collect all monies required thereby, and shall exercise the duties of a constable in regard thereto, and receive the same compensation therefor, and be liable under his bond for all money collected by him, to be recovered in the same manner and before the same tribunals, that the same are now recovered against constables. **Duties, powers and compensation of sergeant.**

15. There shall be a lien on real estate for the town taxes assessed thereon, from the commencement of the year for which they are assessed, and the council may order and require the same to be sold or rented by the sergeant at public auction for the arrears, with interest thereon, with such per centum as the council may prescribe for charges and expenses thereof, and may regulate the terms upon, and the time within which the same may be redeemed. No such sale or renting shall be ordered until such realty shall be returned delinquent, and the sale shall be after three weeks notice, published in a newspaper in said county (if any) or by posting said notice at the post office in said town. **Lien and sale for taxes on real estate.**

16. The mayor shall be the chief executive officer of said town; shall take care that the by-laws, ordinances and orders of the council are faithfully executed; shall be *ex officio* a consevator and justice of the peace in the town, and shall within the same, exercise all the powers and duties vested in justices, except that he shall have no jurisdiction in civil actions on contract; shall see that peace and good order are preserved, and that persons and property are protected in the town, and may appoint special police officers for that purpose when he deems it necessary; shall have power to issue orders of arrest, and executions for all fines and costs imposed by him, or may require immediate payment thereof, and in default of such payment may commit the party in default to the jail of the county until the **Duties, powers and compensation of mayor.**

fine and costs be paid; but the term of imprisonment in such case shall not exceed thirty days. He shall receive a compensation for his services, to be fixed by the council, which shall not be increased or diminished for the term for which he was elected.

Duties and compensation of recorder.

17. The recorder shall keep a journal of the proceedings of the council, and have charge of and preserve the records of the town, and shall receive a compensation for his services to be fixed by the council, which shall not be increased or diminished for the term for which he was elected.

Duty of treasurer.

18. All moneys belonging to said town shall be paid over to the treasurer, who shall pay out the same upon the order of the mayor, countersigned by the recorder, and not otherwise; and for any default or liability upon the part of the treasurer or the sergeant, the council in the corporate name of said town may on motion, after ten days notice, obtain judgment before the circuit court of said county on account thereof, against them and their securities respectively, or their heirs or legal representatives.

Tax for roads, and labor thereon.

19. The said town and taxable persons and property therein, shall be exempt from all expense or liability for the construction or repair of roads or bridges outside the corporate limits of said town; but nothing in this act shall be construed to exempt the inhabitants of said town from performing work on the roads and bridges outside of said corporation.

Effect of former acts.

20. All rights, privileges and properties of the said town heretofore acquired by any act now in force, shall continue and remain vested in said town by this act, and all laws inconsistent with this act are repealed.

CHAP. 99.—An ACT to provide Indexes to the Journals of the Senate and House of Delegates.

Passed February 28, 1866.

Be it enacted by the Legislature of West Virginia:

Preparation and printing of indexes.

The clerk of the senate and the clerk of the house of delegates shall each, at the end of every session of the legislature, prepare indexes to their respective journals, and deliver the same to the public printer, who shall print and bind the same with the journals as the index to the acts is printed and bound. As a compensation for preparing said indexes, the per diem of said clerks shall extend for the period of ten days after the adjournment of the legislature.

CHAP. 100.—An ACT to refund the Taxes collected from Soldiers for Bounty purposes.

Passed February 28, 1866.

Be it enacted by the Legislature of West Virginia:

All taxes heretofore collected from any person who has been in the military service of the United States during the late war, and has been or may hereafter be honorably discharged therefrom, or from the widow or heirs of such soldier, for bounty purposes, shall be refunded.

Taxes to be refunded.

Provided, that the provisions of this act shall not apply to any person who has volunteered into the service of the United States since the first day of January, eighteen hundred and sixty-four.

Proviso.

CHAP. 101.—An ACT to incorporate the Wheeling and Moundsville Turnpike Company.

Passed February 28, 1866.

Be it enacted by the Legislature of West Virginia:

Subscriptions.

1. It shall be lawful to open books for receiving subscriptions to an amount not exceeding thirty thousand dollars, to be divided into shares of twenty-five dollars each, to constitute a joint capital stock for constructing a turnpike road from the line dividing the counties of Ohio and Marshall to the corporate limits of the town of Moundsville of Marshall county, either upon the bed or track of the Marshall and Ohio turnpike road, heretofore constructed or authorized by law to be constructed, or by such other route or any part thereof, as the corporation hereinafter provided for may determine upon. The said books shall be opened under the direction of Alonzo Loring, Edward M. Norton and John Handlan, of the city of Wheeling, and Shepherd McMechen, Hiram McMechen, V. L. Cockayne, Alfred Tomlinson, William Alexander, George Edwards and Josiah Bryson, of Marshall county, or any one or more of them, and at such place or places and at such times, as a majority of the above named commissioners may appoint; ten days public notice thereof being previously given.

Commissioners.

Incorporation.

2. When ten thousand dollars of the capital stock shall have been subscribed, the subscribers, their executors, administrators and assigns shall be incorporated into a company by the name and style of "The Wheeling and Moundsville Turnpike Company," subject to the provisions of the code of Virginia, second edition, except that said road may be located at such grade and constructed of such material as the company may deem most expedient, and that it shall be opened through the narrows above the flats of Grave creek at least twelve feet in width, and in other parts thereof thirty feet, with a road bed in other parts either macadamized or covered with gravel, of at least fifteen feet in width.

Grade and material of road.

Construction of road.

3. The company shall first locate and construct that part of said road from its northern terminus to Benwood, in the county of Marshall, and may erect a gate thereon when completed to that point,

for the collection of tolls, not exceeding the rates allowed by law; and shall then locate and construct the remainder of said road to its southern terminus as fast as the funds of the company will permit, and may erect a gate thereon, when opened to the public, for the collection of tolls, but the proceeds of such tolls shall first be applied to keeping said road in good repair, before any dividend be made to the stockholders. Provided, however, that nothing herein contained shall prevent said company from locating and constructing any portion of said road south of Benwood simultaneously with the construction of that portion thereof north of that point, or at any other time upon an amount of stock being subscribed by the land owners along the line of such part of said road, or by other solvent persons, as may be deemed sufficient for the construction of any continuous section of at least two miles of road, such subscription of stock to constitute a separate fund and to be held by the company for the purpose above indicated; nor to prevent the collection of tolls upon any such section not exceeding the rates allowed by law, to be applied first to keeping such part of said road in good repair before dividends on the stock be made to the stockholders of said separate fund.

Proviso.

Subscription by Marshall county.

4. The board of supervisors of the county of Marshall, in behalf of said county, may subscribe for not exceeding the one sixth of said capital stock, and levy the amount thereof on the taxable property of said county at their first levy thereafter, or the one-half of such amount at the first, and the residue at the second annual levy, as by the said board may be deemed most expedient.

CHAP. 102.—An ACT concerning Marriages between colored persons.

Passed February 28, 1866.

Be it enacted by the Legislature of West Virginia:

Marriages between colored persons legalized.

1. All marriages heretofore celebrated between colored persons under licenses issued by any recorder of this state, and all marriages between such persons, whether under such license or not, if the same was consummated in good faith on the part of the persons so married, and such persons are living together as husband and wife at the time of the passage of this act, shall be deemed valid.

Registration of births, deaths and marriages.

2. All laws now in force in this state regulating marriages and marital rights, and providing for registration of births, marriages and deaths, shall apply to colored persons in the same manner as to white persons; Provided, the registration of births, marriages and deaths of white and colored shall be kept separate and distinct.

CHAP. 103.—An ACT to provide for the Payment of certain Military Claims therein mentioned.

Passed February 28, 1866.

Be it enacted by the Legislature of West Virginia:

Appropriation.

That the sum of one hundred and forty-eight thousand three hundred and ninety-nine dollars and ninety-nine cents is hereby appropriated and placed at the disposal of the governor, to pay the claims audited and allowed by the board of claims, under and by virtue of the act passed February twenty-fifth, eighteen hundred and sixty-five, entitled "an act creating a board for the examination of certain military claims," as stated in the report of said board, accompanying the message of his excellency, the governor.

CHAP. 104.—An ACT in relation to Evidence in actions involving the title to Lands.

Passed February 28, 1866.

Be it enacted by the Legislature of West Virginia:

Copies of certain papers to be admitted as evidence.

Effect of certificates of auditor of Virginia.

That a copy of any record or paper in the clerk's office of any court in the state of Virginia, or in the office of the secretary of the commonwealth, treasurer, register of the land office, or either auditor, or any surveyor of the state, attested by the officer in whose office the same is, may be admitted as evidence in lieu of the original. And the certificate of the auditor of public accounts of the said state, of the fact and time of the return of any real estate as delinquent, or of the sale thereof for taxes, shall be *prima facie* evidence of what is stated in such certificate. Any such copy or certificate purporting to be sealed, or sealed and signed, or signed alone by any such officer, may be admitted as evidence without any proof of the seal or signature, or the official character of the person whose name is signed to it. The certificate of the auditor of public accounts of said state, of the payment or non-payment at any time of taxes on forfeited or delinquent land, or of dues not having been entered on the books of the commissioner of the revenue, for the county or counties wherein the same were chargeable with taxes, shall, in any suit in relation to such lands, be *prima facie* evidence of what is stated in such certificate, provided it be filed with the papers of said suit at least forty days before the first day of the term at which it is to be offered as evidence. When the certificate purports to be signed by the said auditor, it may be admitted as evidence without proof of his signature. And such a copy of any writing filed in a suit, may be filed in another suit on the same writing, and the defendant shall plead thereto as if the original were filed.

CHAP 105.—An ACT to authorize the Board of Public Works to audit claims against the State of Virginia.

Passed February 28, 1866.

Be it enacted by the Legislature of West Virginia:

Authority and report of board.

That the board of public works are hereby authorized to audit all claims against the state of Virginia, which are due and unpaid within the bounds of this state, and report to the next legislature.

CHAP. 106.—An ACT prescribing the standard weight of bituminous coal.

Passed February 28, 1866.

Be it enacted by the Legislature of West Virginia:

The standard weight of bituminous coal, within and for this state, is hereby fixed at eighty pounds per bushel.

CHAP. 107.—An ACT for the relief of the securities of William Grass, late Sheriff of Putnam county.

Passed February 28, 1866.

Be it enacted by the Legislature of West Virginia:

Auditor authorized to compromise with securities.

The auditor is hereby authorized to stay proceedings against the securities of William Grass, late sheriff of Putnam county, for all liabilities incurred by them as such securities; and the auditor is hereby authorized to compromise with the aforesaid securities by accepting a part of the amount due by them and releasing them from further liability, if in his opinion the interests of the state would be promoted thereby.

CHAP. 108.—An ACT for the relief of John D. Payne.

Passed February 28, 1866.

Be it enacted by the Legislature of West Virginia:

That John D. Payne, formerly deputy-sheriff of the county of McDowell, state of Virginia, be, and he is hereby relieved from all liability to the said state of Virginia.

CHAP. 109.—An ACT in relation to the Guyandotte Navigation Company.

Passed February 28, 1866.

Be it enacted by the Legislature of West Virginia:

Incorporation.

1. The said Guyandotte Navigation company is and shall continue to be a body corporate under the name and style of "The Guyandotte Navigation and Land Company," with the rights and powers conferred by the acts of the general assembly of Virginia, passed the

sixteenth day of March, eighteen hundred and forty-nine, fourth day of March, eighteen hundred and fifty-one, and the twenty-eighth day of February, eighteen hundred and sixty, and subject to the duties and obligations imposed by said acts, except so far as the same are inconsistent with this act.

Relinquishment of state stock on certain condition.

2. The interests and stock of the state in said Navigation Company is relinquished to the stockholders other than the state, provided said company shall improve the navigation of the Guyandotte river, in the manner contemplated by the existing charter, or by substituting for locks and dams, sluices with wing dams, the whole or any part of the distance mentioned in said charter, which it is authorized to do, if deemed more expedient; shall commence the work within two years, and complete the same within ten years from and after the passage of this act; or account to the state for the now present value of the stock and interest hereby relinquished, with interest from the date of this act.

Capital stock.

3. Said company is authorized to increase its capital stock to an amount not to exceed three millions of dollars, and sell and dispose of the same; to purchase, hold and dispose of, by title, legal or equitable, all the right, title, interest and estate now owned by the stockholders other than the state, or any of them in their individual capacity, or by those claiming under them or any of them, in the four Samuel Smith's surveys, which lie contiguous to each other, and mostly upon said Guyandotte river and its tributary waters, and include in their exterior boundaries three hundred and seventy-nine thousand acres, with other lands lying within the limits aforesaid, or contiguous to said river, not to exceed in all three hundred and seventy-nine thousand acres, and deliver its stock in payment thereof, or any part thereof; to clear out and otherwise improve the streams that are tributary to said Guyandotte river, and any other streams that may afford convenient outlets to the Ohio river for the products of its lands, and to construct rail and other roads from any part of its lands, which shall connect with its improvements, or other improvements that may be built, provided the vested rights of individuals shall not be invaded or infringed, except due compensation shall be made according to law; and to charge and collect such tolls upon its improvements as shall be deemed reasonable, subject, however, to the approval of the board of public works, or the legislature.

Powers of company.

Powers of company.

4. Said company shall have power to improve and sell its lands, develop their resources, and to sell and transport to market the products thereof, to manufacture the raw material coming therefrom, or from other sources, and to sell or otherwise dispose of, and to transport the manufactured articles to market; and to sell and dispose of its lands, or any part thereof, in the manner it may deem best to individuals or corporations, to hold, use and sell, or otherwise dispose of to others, the water power that may be created by the erection of locks and dams upon the Guyandotte river, if that mode of improvement shall be adopted.

Meetings and elections.

5. Granville Parker, Esquire, president of said company, is authorized to call a meeting of the stockholders, other than the state, at any time within six months after the passage of this act, at such place as he shall deem most convenient, giving reasonable notice, for the purpose of laying before them this act, and if accepted, of electing a board of directors and president, who shall inform the board of public works of such acceptance, and transact any other necessary business. At all general meetings and elections, each stockholder may, in person or by proxy, cast one vote for every share of stock owned by him. Said company shall have its principal office of business in Cabell county, in this state, where the meeting of its stockholders shall be held, but may have a branch office in the city of New York, where the first meeting of its stockholders may be held.

CHAP. 110.—An ACT amending the Charter of the Town of Grafton.

Passed February 28, 1866.

Be it enacted by the Legislature of West Virginia:

Corporate limits.

1. The corporate limits and boundaries of the town of Grafton shall be as follows: Beginning at the mouth of Bartley creek, on the north side of the Valley river, and running with the lines of the township north to a large spring on the northwestern turnpike; thence east, but excluding the property of John K. Knotts, to the east corner of said township, near the dwelling of J. W. Blue; thence with said township line, crossing Three Fork to the Valley river; thence with said township line down the Valley river to the beginning.

Municipal authorities.

2. The municipal authorities of said town shall be a mayor and six councilmen, who shall, together, form a common council, one of which shall be selected by the board of councilmen to act as alderman, whose duty shall be to act as mayor in his absence.

Corporation.

3. The mayor and councilmen, so soon as they have been elected and qualified as hereinafter provided, shall be a body politic and corporate by the name of the "Town of Grafton," and shall have perpetual succession and a common seal, and by that name shall sue and be sued, implead and be impleaded; may purchase and hold real estate necessary to enable them the better to discharge their duties, and needful for the good order, government and welfare of said town.

Exercise of corporate powers.

4. All the corporate powers of said corporation shall be exercised by the said council, or under their authority, except where otherwise provided.

Town officers.

5. There shall be a town clerk, a sergeant, a treasurer and commissioner of the revenue, appointed by the council, to continue in office at its pleasure, and perform the duties respectively as hereinafter prescribed, or as may be required by the council.

6. The duties of the office of clerk, treasurer and commissioner of the revenue may be discharged by the same person, or otherwise, as the council may from time to time determine.

7. The qualified voters of said town shall, on the third Monday in March, eighteen hundred and sixty-six, elect a mayor and six councilmen, to hold their offices as follows: The three councilmen receiving the highest number of votes shall serve two years, and the three councilmen receiving the smallest number of votes shall serve but one year, or until their successors are elected and qualified, and thence annually thereafter there shall be elected three councilmen, each of whom shall hold his office for the term of two years, unless they become non-residents of the town; but the mayor shall be elected annually. Vacancies in said board of councilmen shall be filled by said board. The first election under this act shall be holden at the tavern house of L. Purdue and conducted by the supervisors and inspectors of the township elections, and annually thereafter by three persons who are freeholders, selected by the council. Elections for mayor and councilmen.

8. All persons resident in said town and entitled to vote for county and township officers, shall be entitled to vote for mayor and councilmen. Voters.

9. When a vacancy shall occur from any cause in the office of mayor, or in the council, the vacancy shall be filled by appointment by the council. How vacancies filled.

10. At all elections the vote shall be by ballot, and when two or more persons for the same office at any election shall receive an equal number of votes, the person or persons conducting such an election, shall decide which of said persons shall be returned elected. And all contested elections shall be heard and determined by the council for the time being. Elections.

11. The mayor, councilmen, clerk, sergeant, treasurer and commissioner of the revenue shall each, before entering upon the duties of his office, and within ten days after being furnished with a certificate of his election, take and subscribe the oath of loyalty prescribed for county and township officers, and that they will truly, faithfully and impartially discharge the duties of their said offices, respectively, to the best of their abilities, so long as they continue in office. The clerk shall take such oath or affirmation before a justice or other officer authorized to administer oaths, and thereupon he shall administer the oaths aforesaid to the other officers and councilmen. Certificates of the said oaths or affirmations shall be recorded in the journal of the proceedings of the council. Oaths of officers.

12. When any four of the newly elected councilmen shall have been so qualified, they shall enter upon their said offices and supersede the former councilmen. Councilmen.

13. If any one elected mayor, or councilman shall not have been eligible, or shall fail or refuse to take the oath or affirmation required How vacancies may occur.

under this act within the ten days aforesaid, such shall be declared vacant, and the vacancy filled as hereinbefore prescribed, but in all cases from among the citizens of the town eligible to such office or position under this act.

Presiding officer of council.

14. The council shall be presided over at its meetings by the mayor, and in his absence by the alderman, and in the absence of both by one of the councilmen, selected by a majority of the council present, and a majority of the council shall be necessary to constitute a quorum to do business.

Journal of council.

15. The council shall cause to be kept in a journal an accurate record of all its proceedings, by-laws, acts and orders, which shall be fully indexed and opened to the inspection of the voters of the town.

Proceedings of council.

16. The proceedings of the last meeting shall be read to the council, corrected, where necessary, and signed by the person presiding for the time being. Upon the call of any member, the ayes and noes on any question shall be called and recorded in the journal. The mayor, in cases of a tie, shall have the casting vote.

Powers of council.

17. The council so constituted shall have power within said town to lay off, open, curb and pave streets, alleys, walks and gutters for the public use, and to alter, improve and light the same, and have them kept in good order and free from obstruction on or over them; to regulate the width of sidewalks and streets, and to order the sidewalks, footways and gutters to be curbed, paved and kept in good order, free and clean, by the owners or occupants of the adjacent property; to lay off public grounds and provide, contract for and take care of public buildings proper to the town; to prevent injury or annoyance to the public or individuals from anything dangerous, offensive or unwholesome; to abate or cause to be abated, anything which in the opinion of a majority of the whole council, shall be a nuisance; to regulate the keeping of gunpowder and other combustibles; to provide for the burial of the dead; and for this purpose may purchase and hold the necessary land for a cemetery, near or convenient to said town, and provide for its improvement and security; to provide for the regular building of houses and other structures in or for said town, for the making of division fences, and to provide for shade and ornamental trees, and against danger or damage from fires or contagious diseases; to provide a revenue for the town, and appropriate the same, and to provide the annual assessment of taxable persons and property of the town; to adopt rules for the transaction of business and the government regulations of its own body; to promote the general welfare of the town and protect the property, and preserve peace and good order therein; to keep a town guard; appoint and order out a patrol for the town when deemed necessary; to appoint such officers as they may deem proper, including a sergeant, commissioner of the revenue and treasurer; to define their powers, prescribe their duties, fix their term of service and compensation, require and

take from them bonds, with such sureties and in such penalty as the council may determine, conditioned for the true and faithful discharge of their duties, and remove them at pleasure, (all bonds to be made payable to the town by its corporate name); to erect or authorize or prohibit the erection of gasworks or waterworks in or near the town; to prevent injuries to or pollution of the same; for all which purposes named in this clause, except that of taxation, the council shall have jurisdiction for one mile beyond the borough; to regulate and provide for weighing and measuring of hay, coal and other articles sold or for sale in said town, and to regulate the transportation thereof through the streets, and generally to do such things as the council shall deem necessary for the interests, prosperity, peace and good order of the citizens of said town.

Ordinances and by-laws.

18. To carry into effect these enumerated powers, and all others conferred upon said town or its council expressly, or by implication in this or any other acts of the legislature, the council shall have power to draft and enforce all needful orders, by-laws and ordinances, not contrary to the constitution and laws of this state, and to prescribe, impose, and enforce reasonable fines and penalties, including imprisonment for a term not exceeding thirty days, under the judgment and order of the mayor of the said town.

Annual levy.

19. The annual levy ordered by the council may be upon male persons within said town over eighteen years of age; dogs, hogs and other animals, and on all real estate within said town, which is not exempt from state taxation, and all such other subjects in said town as may at the time be assessed with state taxes, provided the tax do not exceed one dollar on every one hundred dollars of value of unimproved lots, and seventy-five cents on every one hundred dollars of the value of real and personal property, or two dollars per head on each taxable person.

Licenses.

20. When anything for which a state license is required, is to be done within the said town, the council may require a town license to be had for doing the same, and may impose a tax thereon for the use of the town, and the council may in any case require from the person so licensed, a bond with sureties, in such penalty and with such conditions as it may determine.

Duties, powers and compensation of sergeant.

21. The sergeant shall collect the town taxes, fines, levies, and licences; and within thirty days from the time he may receive the books of the commissioner of the revenue of said town, may distrain and sell therefor in like manner as a sheriff may for state taxes, and shall in all respects, have the same powers as a sheriff, to enforce the payment and collection thereof, and shall within the corporate limits of the town exercise all the duties that a constable can legally exercise in regard to the collection of claims, executing and levying process, and shall be entitled to the same compensation therefor, and he and his securities shall be liable to all the fines, penalties and forfeitures that a constable is legally liable to, and for any failure or

dereliction in said office, to be recovered in the same manner and before the same tribunals that the same are now recovered against constables.

Lien and sale for taxes on real estate.

22. There shall be a lien on real estate for the town taxes assessed thereon from the commencement of the year for which they are assessed, and the council may order and require the same to be sold or rented by the sergeant at public auction for the arrears, with interest thereon, with such per centum as the council may prescribe for charges and expenses thereof, and may regulate the terms upon and time within which the same may be redeemed. No such sale or renting shall be ordered until such realty shall be returned delinquent, and the sale shall be after twenty days notice, posted at the court house door and the post office in said town.

Powers of council.

23. The council may prohibit any theatrical or other performance, show or exhibition it may deem injurious to the morals or good order of the town.

Powers, duties and compensation of mayor.

24. The mayor shall be the chief executive officer of the town, shall take care that the by-laws, ordinances and orders of the council are faithfully executed, shall be *ex-officio* a conservator and justice of the peace, in the town, and shall within the same, exercise all the powers and duties vested in justices, except that he shall have no jurisdiction in civil causes; shall have control of the police of the town, and may appoint special police officers; shall see that peace and good order are preserved, and that the persons and property are protected in the town; shall have power to issue executions for all fines and costs imposed by him, or may require the immediate payment thereof, and in default of such payment, may commit the party in default to the jail of the county until the fine and costs be paid but the term of imprisonment in such case shall not exceed thirty days. He shall from time to time recommend to the council such measures as he may deem needful for the welfare of the town, and shall receive a compensation for his services, to be fixed by the council, which shall not be increased or diminished for the term for which he was elected.

Duties and compensation of clerk.

25. The clerk shall keep a journal of the proceedings of the council, and have charge of and preserve the records of the town, and shall receive a compensation for his services, to be fixed by the council, which shall not be increased or diminished for the term for which he was elected.

Duties of treasurer.

26. All moneys belonging to said town shall be paid over to the treasurer, who shall pay out the same upon the order of the mayor, countersigned by the clerk, and not otherwise and for any default or liability upon the part of the treasurer or sergeant, the council, in the corporate name of said town, may on motion, after ten days notice, obtain judgment before the circuit court of said county on account thereof, against them and their securities respectively, or any or either of them or their heirs or legal representatives.

27. The said town, and taxable persons and property therein, shall be exempt from all expense or liability for the construction or repair of roads or bridges outside the corporate limits of said town.

Exemption from road tax.

28. All rights, privileges and properties of the said town heretofore acquired and possessed, owned and enjoyed, by any act now in force, shall continue and remain vested in said town in this act, and all laws, ordinances, acts, resolutions, rights and liabilities existing and now in force not inconsistent with this act, shall continue in full force and effect, until regularly repealed by a council elected as provided under this act.

Effect of former acts.

CHAP. 111.—An ACT to amend the law concerning Corporations.

Passed February 28, 1866.

Be it enacted by the Legislature of West Virginia:

1. The stockholders or directors of any corporation formed under or accepting the provisions of the "Act providing for the formation of corporations and regulating the same," passed October twenty-sixth, eighteen hundred and sixty-three, may hold any meeting for the transaction of the lawful business of the corporation, including the first general meeting for purposes of organization, and may keep their principal office in any state or territory of the United States or in the District of Columbia. But no meeting shall be held out of this state without the concurrence of persons holding a majority in value of the stock of the company, nor without reasonable notice.

Corporations may have offices and meetings out of this state.

2. Every corporation which shall have been formed under or accepted the provisions of said act before the passage of this act, shall, before the first day of May in the present year, and every other such corporation hereafter formed, shall within thirty days after organizing, appoint by power of attorney duly executed, some person residing in the county in this state wherein its business is conducted, to accept service on behalf of said corporation of any warrant, process or notice; and for such corporation, annually at the proper time, to make the return required by section forty-nine of chapter one hundred and eighteen, of the acts of eighteen hundred and sixty-three, to the assessor of the county or district wherein the business of the corporation is carried on. Said power of attorney shall be filed and recorded in the recorder's office of the county in which the attorney resides; and the admission to record of such power of attorney shall be deemed evidence of compliance with the requirements of this section. Any corporation failing to comply with said requirements, shall forfeit not less than two hundred dollars nor more than five hundred dollars, for each year such failure continues.

Corporation to appoint attorney.

Penalty for failure.

CHAP. 112.—An ACT to authorize the Judge of the Ninth Judicial Circuit of West Virginia to fill official vacancies in his Circuit.

Passed February 28, 1866.

Preamble.

Whereas, in the five counties comprising the ninth judicial circuit of West Virginia, to-wit: in the counties of Pocahontas, Greenbrier, Monroe, Mercer and McDowell, in consequence of rebel opposition and resistance to the law, the organization of the government and the establishment of civil law have been and are still greatly obstructed and retarded, to the prejudice of public justice and the inconvenience of the people generally,

Be it enacted by the Legislature of West Virginia:

Appointment of county and township officers by judge.

1. That it shall be lawful for the judge of the said circuit, by appointment under his hand and seal, to fill any and all vacancies now existing, or which may hereafter occur, in any of the offices, whether county or township, (with the exception of members of the senate and house of delegates,) in the said counties of Pocahontas, Greenbrier, Monroe, Mercer and McDowell, or any thereof; and the officers so appointed by the said judge, being otherwise legally qualified, shall continue in office, (unless sooner removed therefrom,) until their successors are duly elected and qualified according to law.

CHAP. 113.—An ACT to incorporate the Laurel Fork and Sand Hill Railroad Company.

Passed February 28, 1866.

Be it enacted by the Legislature of West Virginia:

Corporators.

1. William C. Stiles, jr., William R. Sterling, J. N. Camden, Samuel D. Karns and Austin Gunnison, their associates and successors, be and they are hereby constituted a body politic and corporate by the name, style and title of "The Laurel Fork and Sand Hill Railroad Company of West Virginia," and as such they shall have the right to lay out and construct or cause to be laid out and constructed, a railway or railways from any point on the Northwestern Virginia railroad between Kanawha station and Cornwallis station, on said road, northwardly, eastwardly or westwardly to any point between said Northwestern Virginia railroad and the Ohio river, and make such sidings, branches and extensions, not exceeding ten miles in length, as they may deem necessary and convenient to the development of the mineral and agricultural wealth of the country between the said Northwestern Virginia railroad and the Ohio river.

Route of railroad.

Capital stock.

2. The capital stock of said company shall consist of five hundred shares, of the par value of fifty dollars each, and may be increased when deemed necessary, by a vote of the stockholders at any meeting, to an amount not exceeding twenty thousand shares of fifty dollars each.

Company may borrow money.

3. The said company shall have the power and authority to borrow money, in any sum or sums not exceeding in amount one-half of the par value of the capital stock, at a rate of interest not exceeding seven per centum per annum, and to secure the re-payment of the same and the interest thereon; to give bonds secured by a mortgage of and on the said railway, and the corporate rights and franchises guaranteed by this act; which principal moneys shall be payable at such dates and times as the board of directors may deem advisable.

Powers of company.

4. The said company shall have the right to purchase such real estate, and erect or cause to be erected such buildings and improvements thereon from time to time, and use and hold the same, and further, to have the right to purchase all necessary equipments, such as locomotive engines, horses, cars and other vehicles, and all needful appendages for the conveyance of passengers and freight on and over said railway or railways, as may be deemed necessary or convenient for the accommodation and purposes of said company.

Declaration of dividends.

5. That dividends of so much of the profits of said company, as shall appear to be advisable to the directors, shall be declared semi-annually, in each and every year, and be paid at the office of the said company at any time after ten days after declaring the same, but said dividends shall in no case exceed the amount of the net profits of said company, so that the capital stock thereof shall at no time be impaired thereby; and if said directors shall make and declare any dividend impairing the capital stock of said company, the directors consenting thereto shall be liable in their individual capacities to said company for the amount so divided, and each director present when such dividend shall be declared shall be considered as consenting thereto, and unless he or they shall enter his or their written protest against the same, and shall cause the said protest to be entered upon the minutes of the board, and give public notice of the same.

Seal and by-laws.

6. The said company shall make, have and use a common seal, and alter and renew the same at pleasure, and also shall have the power to ordain, establish and put into execution such by-laws, ordinances and regulations as shall appear necessary or convenient for the government of the said corporation, and not being contrary to the constitution of the United States or of this commonwealth, and generally to do all and singular the matters and things which to them shall lawfully appertain, for the well being of said corporation, and the proper order and management thereof.

Subscription books.

7. That the persons therein named, or a majority of them, may proceed to organize the company by opening books of subscription immediately after this act shall become a law, after giving public notice of the time and place of receiving such subscription by publication for one week in one or more newspapers, published in the city of Parkersburg, such subscription books to remain open until five hundred shares of fifty dollars each may be subscribed, and longer should the persons herein named consider necessary, and said com-

pany shall have power to elect a board of five directors, and also such other officers as may be deemed expedient; and at all elections each share of stock represented, either in person or by proxy, shall entitle the holder to one vote.

Charges for transportation.

8. The said company shall have full power to regulate their charges for transportation of persons or produce and other articles, provided that their charge for transporting oil shall in no case exceed the sum of seventy-five cents per barrel, and of persons, and of merchandise other than oil, not more than three times as much as allowed in the code of Virginia, chapter sixty-one, section nineteen.

How far company subject to provisions of the code.

9. The said company shall be subject to all the provisions and liabilities, and entitled to all the benefits, of the code of Virginia, second edition, prescribing general regulations for the incorporation of railroad companies, especially such as are specified in chapters fifty-six, fifty-seven and sixty-one thereof, and of all other general laws now in force relating to railroad companies, except so far as the provisions of this act are or may be inconsistent therewith.

Effect of acts inconsistent herewith.

10. So much and such parts of the code of Virginia hereinbefore recited, or of any act or acts as may be inconsistent with any of the provisions of this act, shall be held not to apply to the company hereby incorporated, as far as the same may affect the charter granted by this act.

Reserved right of legislature.

11. The legislature reserves the right to alter, amend or repeal this act.

CHAP. 114.—An ACT concerning Hawkers and Peddlers.

Passed February 28, 1866.

Be it enacted by the Legislature of West Virginia:

Punishment for selling without license.

Any person acting as a hawker and peddler or itinerant vender of goods, wares or merchandise, who shall offer or expose for sale such goods, wares or merchandise, without having previously procured such license as is required by the first section of chapter one hundred and thirteen of the acts of eighteen hundred and sixty-three, or shall refuse to exhibit such license to any person demanding the same, shall upon information filed before a justice, be fined not less than five nor more than ten dollars for each offense, one-half to the informant; and on default of the payment of such fine or fines, the justice imposing the same shall order the goods, wares or merchandise of the offender to be seized to satisfy the same.

CHAP. 115.—An ACT to amend and re-enact a part of the first section of chapter 20 of the Acts of the General Assembly of Virginia, passed at Richmond in 1861.

Passed February 28, 1866.

Be it enacted by the Legislature of West Virginia:

So much of section one, chapter twenty, of the acts of eighteen hundred and sixty-one, passed at Richmond, as relates to the duties of the minister solemnizing marriages, is amended and re-enacted so as to read as follows:

Sixty days allowed for return of marriage licenses.

"The minister or other person celebrating such marriage shall, within sixty days thereafter, return the said license to the office from whence it issued, with an endorsement thereon of the fact of such marriage and the time and place of celebrating the same."

CHAP. 116.—An ACT to legalize the qualification and official bonds of John N. Louden and J. L. D. Brake, Justices of Warren Township, Upshur County.

Passed February 28, 1866.

Be it enacted by the Legislature of West Virginia:

The qualification and official bonds of John N. Louden and J. L. D. Brake, as justices of Warren township, in the county of Upshur, are hereby legalized.

CHAP. 117.—An ACT to provide for the repair of the Roads and Bridges throughout the State.

Passed February 28, 1866.

Be it enacted by the Legislature of West Virginia:

Roads and bridges transferred to counties.

The interest of this state in all the turnpike roads and bridges within this state, is hereby transferred to the several counties in which the same or a part thereof may lie, and the boards of supervisors of the several counties in which such road or part thereof, or bridge, may lie, are hereby vested with all the rights, powers and duties heretofore vested in the state, as a stockholder in such road or bridge, among which shall be the power to establish gates and collect lawful tolls, and do and transact all other lawful business. The suspension bridges across the Monongahela river at Fairmont and Morgantown, and any other such bridge in this state, and the Kanawha turnpike, are not intended to be included in this act.

Exceptions.

Provided, that this act shall not apply to the Maryland and Virginia Bridge Company.

CHAP. 118.—An ACT for the relief of B. S. Cook, of Roane county.

Passed February 28, 1866.

Preamble.

Whereas, B. S. Cook was, while in the state service in a company of state guards commanded by Captain William King, wounded and is still suffering from the effects of the same, and has been deprived of the use of his legs during the past eighteen months, therefore,

Be it enacted by the Legislature of West Virginia:

Appropriation.

The sum of two hundred and thirty-four dollars is hereby appropriated out of any money in the treasury not otherwise appropriated, for the relief and benefit of the said B. S. Cook, and the auditor is instructed to pay the same on his order.

CHAP. 119.—An ACT for the extension of the corporate limits of the town of Brandonville in Preston county.

Passed February 28, 1866.

Be it enacted by the Legislature of West Virginia:

The corporate limits of the town of Brandonville in Preston county shall be, and are hereby so far extended on the north side of said town as to include a lot of ground conveyed by Joseph Ritenour to H. C. Hagans and Joseph H. Gibson; and also the tannery and its lot now owned by J. E. Hagans; together with the street running between said lots.

CHAP. 120.—An ACT supplemental to the Act establishing the County of Grant.

Passed February 28, 1866.

Be it enacted by the Legislature of West Virginia:

County officers.

1. There shall be a recorder, assessor, county treasurer, surveyor of lands and superintendent of free schools, for the county of Grant. The board of supervisors of said county shall appoint persons to fill said offices until the first day of January, eighteen hundred and sixty-seven.

Offices of clerk and recorder.

2. The offices of the clerk of the circuit court and recorder shall be at such places as the board of supervisors of said county may designate, until the court house at or near John May's is completed. The said board shall also designate the place for holding the circuit courts for said county, until the court house is completed.

Supervisors may borrow money.

3. The board of supervisors of the county shall have power to borrow money, not exceeding ten thousand dollars, at legal interest, and to issue the bonds of the county for the same, to be used in the construction of the public buildings of said county.

4. Jacob Roby, of the county of Grant, and William Fisher, of the county of Hardy, are hereby appointed commissioners to run the dividing line between the said counties of Grant and Hardy, according to the act creating the said county of Grant. The said commissioners shall have power to employ a competent surveyor, who shall run and mark the said line under their direction, and in case they differ, shall decide between them. The said surveyor shall make three plats of the boundary line line run by him, one of which shall be delivered by the said commissioners to the recorders of each of the counties of Grant and Hardy, and the third one shall be delivered to the secretary of the state, to be preserved by them in their respective offices. The supervisors of Grant county shall provide for the expenses of running and marking said line.

Commissioners to run dividing line.

Plats of line run.

CHAP. 121.—An ACT for the relief of Henry J. Whitehouse.

Passed February 28, 1866.

Be it enacted by the Legislature of West Virginia:

The auditor is hereby authorized to issue his warrant upon the treasury for forty-nine dollars and fifty cents in favor of Henry J. Whitehouse, for taxes paid by him into the treasury on an excess of four thousand five hundred acres of land charged to said Whitehouse on the assessors' books of Putnam county, for the years eighteen hundred and sixty-one, eighteen hundred and sixty-two and eighteen hundred and sixty-three.

Appropriation.

CHAP. 122.—An ACT to amend and re-enact an act entitled "An Act to incorporate the Little Kanawha Navigation Company," passed February 4, 1863, and the act to amend and re-enact the first and third sections of the said Act, passed March 1, 1864.

Passed February 28, 1866.

Be it enacted by the Legislature of West Virginia:

1. That it shall be lawful to open books under the superintendence of John V. Rathbone, R. Van Winkle, J. N. Camden, James Cook, Moses Kincheloe, Daniel Wilkinson, E. C. Hopkins, Jonathan Weaver, Charles H. Shattuck and James A. Williamson, or any three of them, at Parkersburg in the county of Wood, at Newark, Elizabeth and Rathbone in the county of Wirt, and at such other places as they may appoint, for receiving subscriptions to the capital stock of the company hereby incorporated for the purpose of improving the navigation of the Little Kanawha river and its branches.

Commissioners to receive subscriptions.

2. The capital stock of said company shall consist of ten thousand shares of twenty-five dollars each, and whenever five hundred shares are subscribed, the subscribers, their executors, administrators and assigns, are hereby incorporated by the name of "The Little

Capital stock.

Incorporation.

Kanawha Navigation Company," and shall be governed by the provisions of the fifty-sixth, fifty-seventh and sixty-first chapters of the code of Virginia, second edition, so far as the same are applicable and not inconsistent with this act. The boards of supervisors of Wood, Wirt, Ritchie, Braxton, Calhoun and Gilmer counties shall have the power to submit the question of making subscription to said company of a sum not exceeding twenty thousand dollars for each county, to the voters thereof, first giving twenty days notice, and if a majority of the votes cast shall be in favor of making the subscription, the board or boards of supervisors are hereby authorized to make such subscription. At all general meetings and elections each stockholder may in person or by proxy cast one vote for every share of stock owned by him.

Subscription by certain counties.

Powers of company.

3. The said company shall have power to improve the navigation of said river, and of Hughes river, by removing any or all of the dams, or any other obstructions existing to the navigation of said rivers or either of them, or by locks, dams, sluices, canals, or by the usual modes of improvement, or by a combination of any two or more of them. They shall commence their said improvement at or near the mouth of the said river, and prosecute the same toward the head, so far as it may be deemed practicable, or the resources will permit, and may in like manner improve Hughes river so far up the same as they may deem proper. When their river improvement has reached the mouth thereof, they may enter and condemn lands for the purpose of their said improvements, under the provisions of the said fifty-sixth chapter of the code of Virginia, and shall have the benefit of all, and any act declaring the said rivers navigable highways; and when the obstructions to the navigation of said river shall have been removed, from Rathbone in the county of Wirt, to Parkersburg in the county of Wood, the said company shall have power to charge and collect for the transportation of crude or refined oils, a toll not exceeding ten cents per barrel of forty gallons, or the like sum for the same number of gallons if transported in any other manner than in barrels, and for empty oil barrels the sum of two and one-half cents, and five cents for each one hundred pounds of freight other than oil, oil barrels, lumber, staves, grain, and all products of the farming community, and for all freights for which no tolls have been specified herein, such rates as shall from time to time be prescribed by law, or fixed by the board of public works, and a greater rate of toll may be fixed by law, or by the board of public works, for the transportation of crude or refined oils, or for empty oil barrels than the amount fixed in this section.

Charges for transportation.

Company may borrow money.

4. The said company shall have power to borrow money from time to time, not exceeding in the aggregate the amount of their capital stock, to issue their bonds or other proper securities for the same, and to pledge their works and property by mortgage or deed of trust for the payment thereof and of the interest to accrue thereon; but in the event of a sale under such mortgage or deed of trust, all bonds

or notes then outstanding, issued in payment for work done or materials furnished on or for their improvement, and so expressed to be on their face, shall be first paid out of the proceeds of such sale.

Commencement and completion of improvement.

5. The said company shall commence the said improvement within two years after the passage of this act, and complete the said improvement up the Kanawha river to the mouth of the West fork of said river within eight years after the passage of this act; and if the said company fails to complete the said improvement to Glenville, in Gilmer county, in ten years after the passage of this act, the right as a company to said Kanawha river shall be forfeited and no longer exist above the mouth of the said West fork of the Kanawha, but shall have the right granted in this act to continue as a company from the mouth of said river to the mouth of the said West fork.

Effect of former subscriptions and acts.

6. All subscriptions made to the capital stock of said company, and all acts done towards organizing said company under the said acts of the fourth of February, eighteen hundred and sixty-three and March first, eighteen hundred and sixty-four, shall be held valid and binding.

CHAP. 123.—An ACT to provide for submitting to the people of West Virginia the proposed Amendment to the Constitution of the State.

Passed February 28, 1866.

Be it enacted by the Legislature of West Virginia:

Election provided for.

1. At the regular township elections, to be held on the fourth Thursday in May, eighteen hundred and sixty-six, the supervisors and inspectors of elections for every place of voting within this state, shall cause a poll to be taken to ascertain the sense of the qualified voters, voting at said township elections, on the ratification or rejection of the proposed amendment to the constitution, as agreed to by joint resolution of the legislature of West Virginia, adopted on the thirteenth day of February, eighteen hundred and sixty-six.

Ballots.

2. At said township elections those voting for the said amendment shall have written or printed on their ballots, the words "For ratification," and those voting against said amendment shall have written or printed on their ballots the words "For rejection:" provided, that the ballot used for voting for ratification or for rejection of said proposed amendment, shall be the same piece of paper used in voting for county and township officers at said election.

How votes shall be counted and entered.

3. As soon as possible after the polls are closed, the names entered on the poll books shall be counted by the inspectors and clerks in the presence of the supervisor, and the number thereof set down in words at the foot of the lists, which shall then be signed by the inspectors and clerks. The ballot-box shall then be opened, and one of the inspectors taking therefrom one ballot at a time, in the pres-

ence of all the other officers, shall read the contents of such ballot and hand the same to the other inspector, who shall satisfy himself that it was correctly read. The contents of the ballot as they are read shall be entered by the clerks, under the supervision of the supervisor and inspectors, on the tally sheets, by suitable marks in the respective columns thereon, so as to show the number of votes for ratification and the number for rejection. The ballots shall be counted as they are read, and whenever the number shall be equal to the number of voters entered on the poll-books, the excess, if any, remaining in the ballot-box, shall be immediately destroyed by the inspectors without examining or allowing any one to examine or know the contents thereof.

Inspectors' certificates of result of elections.

4. As soon as the result is ascertained, the inspectors shall sign two certificates thereof, to the following effect: "We, the undersigned, who acted as inspectors of the election held at ———, in the township of ——— and county of ———, on the twenty-fourth day of May, eighteen hundred and sixty-six, do hereby certify that having first been duly sworn, we have fairly and impartially held the said election according to law, and the result thereof is as follows: "For ratification ——— votes;" "For rejection ——— votes," (giving the number of votes in full in writing.) Given under our hands this —— day of ——, eighteen hundred and sixty-six." The said two certificates shall correspond in all respects, and contain full returns of the polls taken at such place of voting, for ratification and for rejection. The inspectors, or one of them, shall, within three days, excluding Sunday, after the day on which such election was held, deliver one of the certificates to the clerk of the board of supervisors, and the other to the recorder of the county.

Duty of board of supervisors.

5. The board of supervisors of each county shall, at their stated meeting on the twelfth day after such election, ascertain the result thereof in their county in the manner now prescribed by the act to regulate elections by the people. After ascertaining the result of said election, the said board shall cause the same to be entered in their order or minute book in the following form:

At a meeting of the board of supervisors of ——— county, held at ——— on the —— day of ——— 1866. The board having carefully and impartially examined the returns of the elections held at the several places of voting within said county, on the twenty-fourth day of May, eighteen hundred and sixty-six, ascertained that at said election there were cast,

Order of board.

"For ratification,"..votes.

"For rejection,"..votes.

A copy of which order officially signed by the president, and countersigned by the clerk of said board, shall be transmitted by said board, without delay, to the secretary of the state, and endorsing on the envelope or cover as follows: "Returns of election on amendment to the constitution." The secretary of the state shall carefully preserve the said returns until the day for opening and counting the same as hereinafter provided, and after the result is ascertained, the said secretary shall file and preserve the said returns in his office.

6. On the tenth day of July next after the said election, or as soon thereafter as practicable, the governor, secretary of the state, auditor and treasurer, or any three of them, shall proceed to open the envelopes or covers containing the returns from the several counties where the votes shall be counted. If it appear from said returns that a majority of the votes cast were for ratification of the amendment, it shall be the duty of the governor to issue his proclamation setting forth the fact of such ratification by the people, declaring the said amendment to be a part of the constitution of this state, and in force as such from the twenty-fourth day of May, eighteen hundred and sixty six.

Opening of returns.

In case of ratification, governor's proclamation thereof.

7. All laws regulating elections by the people in force on the said fourth Thursday of May next, shall apply to the election herein provided for, in all respects not conflicting with this act, and nothing in this act shall be construed as interfering in any manner with said laws, except so far as the same pertains to the election herein specially provided for.

Effect of general election laws.

CHAP. 124.—An ACT supplemental to the act to regulate the Registration of Voters.

Passed February 28, 1866.

Be it enacted by the Legislature of West Virginia:

1. So much of the "Act to regulate the registration of voters," passed February twenty-sixth, eighteen hundred and sixty-six, as requires the first registration to be completed by the fourteenth day of April next, is hereby amended so as to require the same to be completed by the tenth day of May next.

Time for completion of registration extended.

2. Every registrar, before he returns the registrar books, as provided in the eighth section of said act, shall make, sign and attach to each of said books, a certificate to the following effect:

Registrars' certificate.

"I, (A. B., registrar for ——— township (district or ward, as the case may be,) do hereby certify on my official oath, that the foregoing is a correct list of the voters in my township, (district or ward, as the case may be,) as required by said act.

"Given under my hand this —— day of ———, eighteen hundred and sixty——"

CHAP. 125.—An ACT to amend the Charter of the town of South Wheeling.

Passed February 28, 1866.

Be it enacted by the Legislature of West Virginia:

The sixth and eighth sections of an act passed March thirty-first, eighteen hundred and fifty-one, by the general assembly of Virginia,

Virginia act amended.

entitled "An Act to incorporate the town of St. Mary in the county of Wood, and for other purposes," is hereby amended and re-enacted so as to read as follows:

Election of trustees.

"6. That for the better government and well ordering of the affairs of said town, it shall lawful for every white male inhabitant of the age of twenty-one years and upwards, who shall be a citizen of this state and shall have resided in said town six months next preceding an election, and shall have been assessed and paid tax, to meet at some convenient place in said town on the first Monday in May, and annually thereafter, and then and there nominate and elect by ballot seven fit and able men, being freeholders, to serve as trustees thereof, whose authority shall continue until the first Monday in May in each succeeding year, and until others shall be qualified in their stead, and no longer unless re-elected. Provided, however, that no person shall be eligible as a trustee unless he shall have resided in said town for at least one year previous to his election, and shall have been born in one of the United States or shall have become a citizen by conformity to the naturalization laws of the United States; and until said first election to be held in May as aforesaid, Samuel Ott, George Birch, William Kryter, William B. Martin, Lloyd G. Hughes, Edward Cole and Samuel Humes be and they are hereby appointed trustees of said town, and shall hold their office until their successors shall have been elected as heretofore provided. The said first election shall be superintended by the trustees herein appointed, and at all elections thereafter by the trustees for the time being, at such place as they may appoint and notify by advertisement for at least ten days previous to holding said election. The board of trustees herein appointed shall within thirty days after their appointment, take an oath or solemn affirmation before a justice of the peace for the county of Ohio, for the due and faithful execution of their office, and each and every succeeding board of trustees shall be qualified to their office by the presiding officer of the board of trustees for the time being."

Eligibility of same.

First trustees appointed.

Qualification.

Power to levy poll tax.

"8. It shall be lawful for the trustees of the town of South Wheeling to levy and collect an annual tax not exceeding in any one year one dollar on every tithable living in said town, and an annual tax of fifty cents on every hundred dollars assessed value of the taxable property therein."

Chap. 126.—An ACT in relation to elections by the people.

Passed February 28, 1866.

Be it enacted by the Legislature of West Virginia:

Change of day for annual township elections.

1. The annual township elections shall be held on the fourth Thursday of May, in the year eighteen hundred and sixty-six, and the same day in every subsequent year; but if the first township election be not held in any county on the fourth Thursday in May next, it may be appointed and held after that day as now provided by law.

2. Section fourteen of chapter one hundred, of the acts of eighteen hundred and sixty-three, is amended and re-enacted so as to read as follows:

"14. Every officer and person employed in holding any election by the people shall, before entering on the discharge of his duties, take the following oath: 'I, (A. B.) do solemnly swear that I will support the constitution of the United States and the constitution of this state; that I have never voluntarily borne arms against the United States; that I have voluntarily given no aid or comfort to persons engaged in armed hostility thereto, by countenancing, counseling or encouraging them in the same; that I have not sought, accepted nor attempted to exercise the functions of any office whatever, under any authority in hostility to the United States; that I have not yielded a voluntary support to any pretended government, authority, power or constitution within the United States, hostile or inimical thereto; and that I take this obligation freely without any mental reservation or purpose of evasion. I further swear that in the election about to be held, I will faithfully and impartially discharge my duties to the best of my skill and judgment.' The supervisor, or any one of the inspectors, at any election, or of the persons acting as such, may administer the said oath to the others, and to the clerks and writers. The said oath shall appear, properly certified, on the poll books of every election; and in no case shall the votes taken at any place of voting be counted unless said oath so appear on the poll books." **Oath prescribed for election officers.**

3. Section six of chapter one hundred of the acts of eighteen hundred and sixty-three, and all other acts or parts of acts in conflict with this act, are hereby repealed. **Law repealed.**

CHAP. 127.—An ACT authorizing the trustees of the Methodist Episcopal Church in the town of Clarksburg, to sell their church lot.

Passed February 28, 1866.

Be it enacted by the Legislature of West Virginia:

The board of trustees of the Methodist Episcopal church in the town of Clarksburg, in Harrison county, are hereby authorized to sell a church lot now belonging to them in said town, and convey the same to the purchaser, and to invest the proceeds thereof in other property, for the use and benefit of the said Methodist Episcopal church.

CHAP. 128.—An ACT for the relief of the citizens of Morgan county.

Passed February 28, 1866.

Whereas, it appears that the taxes on persons and property have been assessed in the county of Morgan, for the years eighteen hundred and sixty-one and eighteen hundred and sixty-two, and it **Preamble.**

appearing that no part of such taxes has been collected; and whereas, by reason of the ravages of contending armies, her people have been to a great extent impoverished and rendered unable to pay such taxes; Therefore,

Be it enacted by the Legislature of West Virginia:

Release from taxes for 1861 and 1862.

1. All persons and property within the county of Morgan are hereby released from all liability for the taxes assessed thereon for the years eighteen hundred and sixty-one and eighteen hundred and sixty-two.

Apportionment of school fund.

2. The auditor at the next apportionment of the general school fund, shall apportion to the county of Morgan in addition to its share of such fund this year, such portion as it would have been entitled to receive in the year eighteen hundred and sixty-five, had full returns been made. Such apportionment shall be made upon the enrollment of the present year.

CHAP. 129.—An ACT appropriating the Public Revenue for the fiscal year 1866.

Passed March 1, 1866.

Be it enacted by the Legislature of West Virginia:

Payments in excess of appropriations legalized.

All payments made by the treasurer of this state in excess of appropriations authorized by law to the first day of January, eighteen hundred and sixty-six, upon warrants legally issued by the auditor, are hereby legalized; and the surplus of all appropriations made prior to the first day of January, eighteen hundred and sixty-six, and all money in the treasury not appropriated prior to the first day of January, eighteen hundred and sixty-six, as well as all money that may have come or that may come into the treasury from the first day of January, eighteen hundred and sixty-six, to the first day of January, eighteen hundred and sixty-seven, shall constitute a general fund and be appropriated as follows:

General fund.

Legislature.

For expenses of the legislature for the session commencing on the sixteenth day of January, eighteen hundred and sixty-six, including pay of officers, printing and stationery, twenty thousand dollars.

Rent of capitol.

For rent of Linsley Institute from the first day of January, eighteen hundred and sixty-six, to the first day of January, eighteen hundred and sixty-seven, furniture and repairs to the same and the premises, one thousand dollars.

Judges' salaries.

For salaries of the judges of the supreme court of appeals and of the circuit courts, thirty thousand dollars.

Clerk court of appeals.

For salary of the clerk of the supreme court of appeals, one thousand dollars.

Reporter court of appeals.

For salary of the reporter of the supreme court of appeals, one thousand dollars.

Courts' contingent.

For contingent expenses of courts, four thousand dollars.

For criminal charges, including convicts in jails and their removal, witness', jurors' and jailors' fees, forty thousand dollars. Criminals.

For current expenses of the West Virginia Hospital for the Insane, for the fiscal year eighteen hundred and sixty-six, sixteen thousand dollars. Lunatics.

For expenses of lunatics confined in jails and of conveying them to the hospital, three thousand dollars. Same.

For salary of the governor, two thousand dollars; auditor, one thousand five hundred dollars; treasurer, one thousand four hundred dollars; secretary of the state, one thousand three hundred dollars; and attorney general, one thousand dollars. Executive officers.

For salary of adjutant general, one thousand five hundred dollars.

For salary of quartermaster general, one thousand three hundred dollars.

For the governor, for rent of executive mansion, seven hundred and fifty dollars. House rents.

For auditor, for rent of house, six hundred dollars.

For the secretary of the state, for rent of house, four hundred dollars.

For treasurer, for rent of house, two hundred dollars.

For adjutant general, for rent of house, two hundred dollars.

For contingent expenses of the auditor's office, including books, stationery, printing, postage and fuel, two thousand dollars. Contingents of executive offices,

For contingent expenses of the office of the secretary of the state, including necessary clerk hire, one thousand three hundred dollars.

For contingent expenses of the treasurer's office, three hundred dollars.

For contingent expenses of the adjutant general's office, seven hundred and fifty dollars.

For contingent expenses of the quartermaster general's office, two thousand dollars.

For pay of clerk of the house of delegates as keeper of the rolls, three hundred dollars. Keeper of the rolls.

For salary of first clerk in auditor's office, one thousand two hundred dollars. Clerks' salaries.

For salary of second clerk in auditor's office, one thousand dollars.

For salary of the clerk in adjutant general's office, eight hundred dollars.

For salary of clerk in treasurer's office, four hundred dollars.

For salary of vaccine agent, including fifty dollars not appropriated for since organization of state, one hundred and fifty dollars. Vaccine agent.

For public printing, seven thousand dollars. Printing.

For printing balance of report of Daniel Lamb, by virtue of his contract with joint committee of the legislature, for revising, collating and digesting the code of West Virginia, two thousand five hundred and ninety-five dollars and thirty cents. Code.

Janitor.

For janitor and guard of executive offices, one thousand dollars.

Civil contingent.

On account of the civil contingent fund, ten thousand dollars.

Militia claims.

For militia claims allowed by regimental courts, under act of March third, eighteen hundred and sixty-four, six thousand dollars.

Registration of births, &c.

For registration of births, deaths and marriages, one thousand five hundred dollars.

Gettysburg cemetery.

For soldiers national cemetery at Gettysburg, six hundred and twenty-eight dollars and three cents.

Erroneous assessments.

For refunding taxes erroneously assessed, seven hundred and fifty dollars.

Refunding capitations.

For refunding capitation tax under act of February fourteenth, eighteen hundred and sixty-five, fourteen thousand nine hundred dollars.

Assessors.

For payment of assessors appointed under act of February twenty-fifth, eighteen hundred and sixty-four, three thousand and fifty dollars.

Overpaid taxes.

For refunding over-paid taxes and payment of sheriff's commissions, two thousand dollars.

William Alexander.

For the relief of William Alexander, six hundred dollars.

F. H. Pierpoint.

For the relief of Francis H. Peirpoint, one hundred and twenty-nine dollars and seventy cents.

Robertson Cook.

For the relief of Robertson Cook, seven hundred and thirty-two dollars and fifty cents.

St. Clair Rains.

For the relief of St. Clair Rains, one hundred and three dollars and eighty cents.

Distributing documents.

For clerk of the house of delegates for expenses of distributing documents, sixty dollars.

For agricultural college, ——— dollars.

Penitentiary.

For penitentiary fifty thousand dollars.

Hospital for insane.

For construction of West Virginia Hospital for the Insane, seventy-five thousand dollars.

Registry of voters.

For expenses of registration of voters, twelve thousand dollars.

Re-valuation of lands.

For expenses of revaluation of lands, fifteen thousand dollars.

Antietam cemetery.

For soldiers national cemetery at Antietam, Maryland, one thousand six hundred and seventy-two dollars and forty cents.

Certain assessors.

For pay of certain assessors for services rendered in the years eighteen hundred and sixty-one, eighteen hundred and sixty-two and eighteen hundred and sixty-three, nine hundred dollars.

Daniel Lamb.

For Daniel Lamb, to employ a clerk to assist in preparing the code, five hundred dollars.

Militia claims.

For payment of militia claims audited by "Board of Claims," one hundred and forty-eight thousand three hundred and ninety-nine dollars and ninety-nine cents.

Immigration.

For the commissioner of immigration as compensation for services rendered and to refund money expended and to be expended by him, one thousand dollars.

For soldiers' medals, twenty thousand dollars. Soldiers' medals.

For support of lunatics in the insane asylums at Williamsburg and Staunton, Virginia, twenty-three thousand seven hundred dollars. Lunatics in Virginia.

For expenses of the board of claims, two hundred and fifty dollars. Board of claims.

For expenses of extra session of the legislature, ten thousand dollars. Extra session.

For providing books for the state law library, two thousand dollars. Library.

For paying Captain William Gandee's company of state scouts from February first to May thirtieth, eighteen hundred and sixty-five, one thousand and fifty-six dollars and seven cents. State scouts.

CHAP. 130.—An ACT in relation to the undetermined cases in the Supreme Court of Appeals of Virginia, belonging to this State.

Passed March 1, 1866.

Whereas, There are many cases in the supreme court of appeals of Virginia, at Lewisburg and Richmond, left undetermined by the said court at the time of the breaking out of the rebellion, the subject matter of which belongs to this state and a large amount of the papers of the said cases have been recovered from the cases at Lewisburg and are now in the supreme court of appeals library room, and some of which cases properly belong to the state of Virginia: Therefore, Preamble.

Be it enacted by the legislature of West Virginia:

1. That the governor be and he is authorized to appoint one or more agents on behalf of this state, to examine and arrange the said papers so returned of the undetermined business of the said supreme court of appeals of Virginia, and to retain and return to the supreme court of appeals of this state, such cases as belong to this state, and to return to the state of Virginia the cases belonging to that state, and to procure the cases at Richmond belonging to this state and deliver the same to the proper court here for final disposition, according to law. Appointment of agents by governor and their duties.

2. That the expenses of the said proceeding shall be paid by the governor out of the contingent fund. Expenses.

CHAP. 131.—An ACT to incorporate the Covington and Ohio Railroad Company.

Passed March 1, 1866.

Be it enacted by the Legislature of West Virginia:

1. That the persons upon whom the benefits of this charter may be hereafter conferred, and who may be organized as hereinafter provided, shall thereupon be constituted a corporation, under the name and style of "The Covington and Ohio Railroad Company," according to the provisions of the code of Virginia, second edition, for the government of incorporated companies and not inconsistent herewith. Style of company.

Rights of company in C. & O. R. R.

2. The said Covington and Ohio railroad company, when fully constituted and certified as hereinafter provided, shall have all the rights, interests and privileges of whatsoever kind, in and to the Covington and Ohio railroad, and appurtenances thereto belonging, now the property of the State of West Virginia, upon condition that it shall, within six months after its incorporation, as provided in the tenth section of this act, commence and within six years complete, equip and operate a railroad from some point at or near Covington, Alleghany county, Virginia, and connecting with the Virginia Central railroad, by the way of the White Sulphur Springs, and the valleys of Greenbrier river, New river and Kanawha river, to a point at or near the mouth of Scary creek, and thence to the Ohio river, with the right to adopt the line of the West Virginia Central railway from Charleston to the Ohio river, upon such terms as may be agreed upon with the said West Virginia railway company. The said road to be constructed in a style at least equal to that of the Virginia Central railway, and with grades not higher than those adopted by C. B. Fisk, esquire, the former engineer of the Covington and Ohio railroad.

Condition.

Right to construct branch.

3. The said Covington and Ohio railroad company shall have the right to construct a branch from its main line to connect with the Virginia and Tennessee railroad at such points as it may deem most expedient, and the said company is hereby empowered to acquire real property necessary for the construction of the said railroad and of the said branch.

Capital stock.

4. The capital stock of the company shall not be less than three millions of dollars nor more than twelve millions, in shares of one hundred dollars each, but if necessary to augment the capacity of said road, the capital may from time to time, by a vote of two-thirds of the stockholders, be increased to an amount not exceeding twenty millions of dollars, and each stockholder shall be entitled to one vote for each share of his stock.

Organization.

5. The stockholders at their first meeting shall elect directors, who, a majority thereof being necessary for a quorum, shall elect a president (from their own body) and shall appoint all other officers and agents, make by-laws and transact all businesss necessary to promote the the purposes of the corporation.

Power to borrow money.

6. The president and directors may create indebtedness in the manner prescribed by the by-laws for the purchase of materials, the construction and equipment of said railroad and for all other necessary purposes.

Rate of freights.

7. The rate of charge by said company for passengers and freight transported on the main line and branches of said railroad shall never exceed the highest allowed by law to other railroads in the state, and no discrimination shall be made in such charges against any connecting railroad or canal company chartered by the state, and no taxation upon the property of the said company shall be imposed by the state until the profits of said company shall amount to ten per cent on the capital of the company.

Exemption from taxation.

8. If said company shall fail to commence work or put the road in operation within the time specified in the second section, then the franchise hereby granted shall revert to the state, and the commissioners hereinafter named shall take possession of the said road after serving due notice in writing to the president of said company, that said reversion and repossession is claimed.

Failure of company to comply with charter.

9. George W. Summers, James Burley, Burton Despard, Joel McPherson and James O. Watson are hereby appointed commissioners to act on the part of the state of West Virginia, who shall act in conjunction with the commissioners appointed by the state of Virginia, whose duty it shall be to offer the benefits of this charter for the acceptance of capitalists, so as to secure the speediest and best construction, equipment and operation of said railroad. To this end they are empowered to make a contract with any parties who shall give the best terms and the most satisfactory assurances of capacity and responsibility, and to introduce into said contract any additional stipulations for the benefit of the state, and in furtherance of the purposes herein declared and not inconsistent with this act; which said contract shall be to all intents and purposes as much a part of this charter as if the same had been herein included at the time of the passage of this act. Provided, That no act of the said commissioners, whether acting by themselves or in conjunction with the commissioners appointed by the state of Virginia, shall be valid or effectual unless approved of or voted for by at least three of the commissioners appointed by this act.

West Virginia commissioners.

Authorized to make contract for construction of road.

Proviso.

10. The certificate of the said commissioners of the due execution of the said contract, and the organization of the said company, shall operate to confer upon said company all the benefits of this charter, subject only to the provisions of the code of Virginia, second edition, for the government of internal improvement companies, so far as the same may not be inconsistent herewith.

Effect of contract.

11. Should the forfeiture provided for in the eighth section occur, the said commissioners may make a new contract with any other parties as though no former contract had been made.

New contract.

12. The said commissioners may receive from the treasury of the state their necessary expenses incurred in the execution of the duty herein imposed upon them, and shall not directly or indirectly receive any emolument from, or have any interest in any company created by this charter.

Commissioners expenses.

13. The governor shall, upon the passage of this act, immediately communicate the same to the governor of Virginia.

Duty of governor.

CHAP. 132.—An ACT in relation to Oaths of Suitors.

Passed March 1, 1866.

Be it enacted by the Legislature of West Virginia:

The act entitled "An Act to prevent the prosecution of suits and the suing out of process by persons engaged in the rebellion," passed February twenty-eighth, eighteen hundred and sixty-five, shall not apply to any case wherein the cause of action arose since the first day of April, eighteen hundred and sixty-five, or shall hereafter arise; nor shall any plaintiff be required to take any of the oaths prescribed by the said act until the defendant or defendants shall take and file with the papers of the cause, in addition to the oath required by the said act for defendants, the same oath which plaintiffs may be required to take under the said act.

JOINT RESOLUTIONS.

[No. 1.] Joint Resolution in reference to printing the Governor's Message.

Resolved by the Legislature of West Virginia, That five thousand copies of the governor's message be printed for the use of the legislature.

ADOPTED, January 17, 1866.

[No. 2.] A Joint Resolution referring the Documents accompanying the Governor's Message.

Resolved by the Legislature of West Virginia, That the documents accompanying the governor's message be referred to a joint committee of five, three to be appointed for the house and two for the senate, to report what portions of the said documents, and the number of each, should be printed for the use of the two houses.

ADOPTED, January 17, 1866.

[No. 3.] Joint Resolutions requesting the Members of Congress from this State to urge the consent of Congress to the transfer of the Counties of Berkeley and Jefferson to this State.

Whereas, On the 31st day of January, A. D. 1863, the legislature of the state of Virginia passed a law giving the consent of said state to the county of Berkeley becoming a part of the state of West Virginia, and authorizing a vote to be taken in said county on the fourth Thursday of May, 1863, upon the qestion of annexing said county to the state of West Virginia; and, whereas, on the fourth day of February, A. D. 1863, a like law was passed by the legislature of the state of Virginia, authorizing the people of Jefferson county on the same day to take a vote upon annexing said county of Jefferson to the state of West Virginia; and, whereas, on the said fourth Thursday of May, A. D. 1863, a vote was taken in each of said counties in pursuance of said laws upon the question of annexing said counties to the state of West Virginia, and a majority of the votes cast in each of said counties was in favor of said annexation; and, whereas, on the 22d day of July, A. D. 1863, his excellency Francis H. Peirpoint, then and still governor of the commonwealth of Virginia, certified to the governor of the state of West Virginia under his hand and the less seal of said state, that from the returns on file in his office a very large majority of the votes cast at said elections in said counties was in favor of said annexation; and, whereas, on the 5th day of August, A. D. 1863, the legislature of West Virginia passed a law accepting the transfer and annexation of the said county of Berkeley to the said state of West Virginia;

and, whereas, on the 2d day of November, A. D. 1863, the legislature of West Virginia passed a like law accepting the transfer and annexation of said county of Jefferson to the said state West Virginia; and, whereas, ever since the passage of these laws the state of West Virginia and the various state, county and township officers of said state have continually exercised exclusive and undisputed jurisdiction, and all the acts of municipal sovereignty necessary for the good government of said counties; and, whereas, it has been recently claimed and insisted that the transfer and annexation of said counties was not valid and complete until the same was ratified by congress; and, whereas, the doubt and uncertainty created by such claims and representations tend greatly to create a spirit of insubordination and disloyalty to the laws and government of the state: therefore,

Be it resolved by the Legislature of the state of West Virginia:

1. That our senators and representatives in congress be requested to urge the speedy passage of a bill or joint resolution by congress giving its consent to the annexation and transfer of said counties to the state of West Virginia, ratifying and approving the same.

2. Resolved, That the governor be requested to furnish each of our senators and representatives in congress a copy of the foregoing resolutions.

Adopted, January 18, 1866.

[No. 4.] Joint Resolution fixing a time for the election of Public Printer.

Resolved by the Legislature of West Virginia, That the two branches will proceed on Tuesday, the 23d instant, at eleven o'clock A. M., to elect a public printer.

Adopted, January 20, 1866.

[No. 5.] Joint resolution relating to the passage of a law by Congress granting lands to the State of West Virginia, to aid in the construction of certain Railroads.

Whereas, A bill is now pending in the house of representatives of the United States, entitled "A bill granting lands to the state of West Virginia to aid in the construction of certain railroads;" and, whereas, the early construction of the lines of railroad mentioned in said bill is of the utmost importance, not only to this state but to the nation at large, forming as they do indispensable links in the chain of great national highways; and whereas, the heavy expenditures imperatively demanded on the part of this state in the construction of her public buildings and otherwise, will, for a long time to come, be such as to prevent the state from assisting in the construction of said roads, therefore,

Resolved by the Legislature of West Virginia:

1. That we do most earnestly and respectfully request the congress of the United States to pass, and his excellency, the president of the United States, to approve, the said bill; and that our senators in the congress of the United

States be instructed, and our representatives therein requested, to use their utmost exertions to procure the passage thereof.

2. That his excellency, the governor of this state, forward to each of our said senators and representatives a copy of this preamble and resolutions.

ADOPTED, January 22, 1866.

[No. 6.] Joint Resolution authorizing the Governor to employ an Agent to visit the Lunatic Asylums of Virginia.

Resolved by the Legislature of West Virginia, That the governor be authorized to employ an agent, who shall proceed immediately to Staunton and Williamsburg, Virginia, for the purpose of ascertaining the number of insane persons in the asylums at each of these places, who were sent from within this state; the amount claimed at each institution for their support to the 1st day of January, 1866, and the terms on which they can remain in these institutions for the current year; and that he make a report to the governor, to be laid before the legislature.

ADOPTED, January 22, 1866.

[No. 7.] Joint Resolution providing for restoring the Statue of George Washington to the State of Virginia.

Resolved by the Legislature of West Virginia, That his excellency, the governor, be and is hereby authorized to turn over to the state of Virginia, or its legally authorized agent, without expense to this state, the bronze statue of George Washington, formerly belonging to the state of Virginia.

ADOPTED, January 23, 1866.

[No. 8.] Joint Resolution requesting the members of Congress from this State to secure the aid of the United States in repairing roads and bridges injured during the war.

Whereas, during the recent rebellion, our state, lying on the border, has been peculiarly exposed to the raids of the enemy and the ravages and desolations resulting from the oft repeated tread of advancing and retreating armies; and whereas, during this painful process, our citizens have endured suffering beyond weight or measure, in the loss of life in every form, at the hand of every variety of enemy — in captivity — in exile — in perils night and day; and in many parts of our state the general disruption of all organized legal and social order, and the embarrassment of even the ordinary pursuits indispensable to their comfort and existence. In this broad sweep of contending armies, and foes of lesser note, many of their churches, court houses — not to mention private property — have been injured or destroyed; but the roads and bridges, the most important of which, were in part owned by the state, and were used and many of them destroyed, by the Union armies — and the bridges burnt by order of the Union commanders as means of safety, leaving our principal roads impassable. Therefore, Resolved by the Legislature of West Virginia, That our senators in congress be hereby instructed, and our representatives requested, to respectfully, yet earnestly, present our grievances to the attention of congress, and to adopt such measures as may best secure adequate relief in the premises; and that the governor transmit a copy hereof to each of our senators and representatives in congress.

ADOPTED, January 24, 1866.

[No. 9.] Joint Resolution relating to printing the Documents accompanying the Governor's Message.

Resolved by the Legislature of West Virginia:

1. That of the documents accompanying the governor's message there be printed for the use of the legislature, the number of copies hereinafter mentioned, namely:

Report of the auditor, two thousand.
Report of the treasurer, two thousand.
Report of the adjutant general, one thousand.
Report of the quartermaster general, one thousand.
Report of the board of claims, three hundred.
Report of the superintendent of schools, three thousand.
Report of the commissioner of immigration, two thousand.
Report of the superintendent of the Hospital for the Insane, three thousand.
Report of the commissioner of the Gettysburg Cemetery, two thousand.
Letter of the president of the James River and Kanawha Company, three hundred.
Letter of the president of the Virginia Central Railroad, three hundred.

2. That the copies of the adjutant general's report of this year, and the unbound copies remaining on hand of his last year's report, be half bound, to be distributed, one copy to each member and officer of the legislature, and the remainder as may be hereafter provided.

3. That of the documents above named, except the adjutant general's report, there be bound in like manner, together with the governor's message, three hundred copies, to be distributed one copy to each member and officer of the legislature, and the remainder as the governor may direct.

ADOPTED, January 26, 1866.

[No. 10.] A Joint Resolution providing a Guard for State Convicts in the Jail of Ohio County.

Resolved by the Legislature of West Virginia, That the governor, whenever in his opinion it is necessary for the safe keeping of the convicts confined in the jail of Ohio county, is authorized to employ one efficient guard for the said jail at a sum not exceeding two dollars per day, in addition to the guards now authorized to be employed by law, to guard the said jail in day time.

ADOPTED, January 30, 1866.

[No. 11.] A Joint Resolution providing Medals of Honor for West Virginia Soldiers.

Resolved by the Legislature of West Virginia, That the governor procure, or cause to be procured, suitable medals as tokens of respect to the officers and soldiers of West Virginia who have served during the rebellion in the service of the United States, containing upon one side the name of the recipient, with his regiment, battalion or battery, surrounded by a wreath; upon the reverse side some appropriate design and inscription. The medal to be suspended by a piece of tri-colored silk ribbon; its artistic features to be equal to the Crimean medal, and its cost not to exceed one dollar each.

The medals and inscriptions to be of four kinds.

1. For the officers and soldiers of the volunteer army who have been or may be honorably discharged from the service.

2. For the officers and soldiers who have been killed in battle.

3. For the officers and soldiers who have died from wounds received in battle.

4. For the officers and soldiers who have died from diseases contracted in the service.

The medals for the officers and soldiers who have been killed in battle or who have died of wounds or disease in the service, to be delivered to the families of said officers and soldiers.

ADOPTED, February 1, 1866.

[No. 12.] A Joint Resolution relating to the late Reciprocity Treaty with England.

Resolved by the Legislature of West Virginia:

1. That our representatives in congress be requested, and our senators instructed, to oppose a renewal of the late reciprocity treaty with England, in relation to our trade with Canada, and to insist that the duty on coal coming into the United States, whether from the British Provinces or elsewhere, shall not be less than two dollars per ton.

2. That a copy of the foregoing resolutions be transmitted by the clerk of the house of delegates to each of our representatives and senators in congress.

ADOPTED, February 12, 1866.

[No. 13.] A Joint Resolution agreeing to the proposed Amendment to the State Constitution.

Whereas, The legislature of this state, at its last session, in conformity to the constitution, agreed to the following proposed amendment to the constitution of this state, to be added at the end of the first section of the third article thereof, to become part of the said constitution when ratified according to the provisions thereof, namely:

"No person who, since the first day of June, 1861, has given or shall give voluntary aid or assistance to the rebellion against the United States, shall be a citizen of this state, or be allowed to vote at any election held therein, unless he has volunteered into the military or naval service of the United States, and has been or shall be honorably discharged therefrom."

And, whereas, The said proposed amendment was published for at least three months before the last general election, in some newspaper in every county in the state in which there was at that time a newspaper printed, therefore,

Resolved by the Legislature of West Virginia, That the said proposed amendment is hereby agreed to.

ADOPTED, February 13, 1866.

[No. 14.] Joint resolution to secure an appropriation by Congress for the payment of certain military claims created in this state during the late war.

Whereas, while it was, no doubt, the desire and intention of the authorities of the United States to protect the loyal people of West Virginia during the late war, by United States troops, from the inroads and devastations of the enemy, and for this purpose posts were established at several points along the border of the state; yet, on account of the great necessity for troops elsewhere — of our proximity to the enemy — a part of our state being occupied by his forces during a great portion of the time — of the fact that there were in our midst many who were traitors at heart, and who, while they professed submission to the laws, were ready to, and did frequently, secretly co-operate with their friends who had taken up arms against their country; and of the peculiar character of the controversy, strife and war which existed in our state, where families, friends and neighbors were separated and arrayed in deadly hostility on the subject of the rebellion and the means used for its suppression; all these made it impracticable for the government to afford that protection to the loyal people against rebel guerrillas, robbers and murderers which they were entitled to, and which was necessary to enable them to remain at their homes and provide the means of support for themselves and families; and it therefore became the duty of the state to provide that protection for its loyal citizens — especially in the border and more exposed counties — which it was manifest the United States did not, and, under the circumstances, probably could not do: And for this purpose independent companies were organized under state authority and were kept on duty in the counties most exposed and liable to the greatest injury at the hands of these armed bands of rebel robbers and murderers, and were paid for their services out of the treasury of the State in pursuance of appropriations made by the legislature for that purpose, and the moneys thus paid amount in the aggregate to the sum of two hundred and thirteen thousand nine hundred and eighty-eight dollars and forty-two cents. ($213,988.42.)

And, whereas, in September, 1863, a company of the militia of Upshur county were under arms for the protection of their neighborhood, and while under arms were attacked and overpowered by a superior force of the enemy and sixty-eight (68) of their number were captured and carried off to southern prisons, where forty-five (45) of them died, and the survivors returned with constitutions broken down and destroyed by the cruel and inhuman treatment received while in prison; and under an appropriation made by the legislature for the purpose, the state has paid to those of this company who returned and to the families of those who died, thirteen dollars per month for the time only that they were prisoners, amounting to the sum of six thousand nine hundred and fifty dollars and eighty cents. ($6,950 80.)

And, whereas, the evidence of the payments so made, although somewhat informal, is nevertheless on file in the office of the quartermaster-general of the state, and is regarded by this legislature as sufficient proof that the payments have been made.

And whereas, It appears from the report of the board of claims, created by an act of the legislature, that claims to the amount of one hundred and forty-seven thousand, six hundred and nine dollars and ten cents ($147,609 10) have been audited by said board for services rendered by the militia of this state since the 20th day of June, 1861; for subsistence furnished the militia when called into service; for the expenses of transportation of such militia and of supplies for their use, and for subsisting and equipping volunteer recruits subsequently mustered into the United States service.

And whereas, This state has furnished its full proportion of troops to the United States army during the late war, exclusive of the state companies mentioned: therefore,

Resolved by the Legislature of the West Virginia:

1. That in view of the facts above recited, which are hereby affirmed to be true; and inasmuch as the sums of money paid by the state, as before mentioned, were paid to state troops who supplied the places of a like number of United States troops, and who afforded a local protection which it seemed impossible otherwise to secure; and the claims audited by the board as aforesaid for the services of the militia of the state, &c., said sums amounting in the whole to three hundred and sixty-eight thousand, six hundred and forty-eight dollars and thirty-seven cents, ($368,648 37) in the opinion of this legislature constitute a just demand against the United States and should be paid by the United States to this state.

2. That the governor be requested to furnish our senators and representatives in congress copies of these resolutions, and also place in their hands evidence of the payment of the claims herein mentioned, and the claims audited by the board as aforesaid, in order that they may lay the same before congress and take such action as in their opinion will secure an appropriation by that body to repay to the state the money paid out as herein set forth, and to pay the claims audited by the "Board of Claims" for the state, before mentioned.

ADOPTED, February 17, 1866.

[No. 15.] A Joint Resolution proposing to Celebrate the Anniversary of Washington's Birthday.

Resolved by the Legislature of West Virginia, That the senate and house of delegates meet in joint session in the hall of the latter, on Thursday, the

22d inst, at 10 o'clock, A. M., and that Washington's farewell address be read upon the occasion.

ADOPTED, February 19, 1866.

[No. 16.] A Joint Resolution in reference to Printing the Governor's Message concerning Lunatics from this State in Virginia Asylums.

Resolved by the Legislature of West Virginia, That two thousand copies of the governor's message concerning lunatics from this state now in the lunatic asylums of Virginia, with the documents accompanying it, be printed for the use of the two houses.

ADOPTED, February 19, 1866.

[No. 17.] Joint Resolution providing for the appointment of trustees of the Berkeley Springs.

Resolved by the Legislature of West Virginia:

1. That the trustees of Berkeley Springs are hereby removed.

2. The judge of the 10th judicial circuit is hereby authorized and empowered to appoint twenty loyal trustees for the said Berkeley Springs, either from the old board of trustees or from amongst those who have not acted as trustees.

3. The judge of the 10th judicial circuit is hereby appointed, *ex officio*, president of said board of trustees.

ADOPTED, February 28, 1866.

[No. 18.] Joint Resolution providing for printing the Executive Message and Documents.

Resolved by the Legislature of West Virginia:

1. The governor is hereby directed to have printed before the regular meeting of the legislature in the year 1867, five thousand copies of the governor's annual message, and two thousand two hundred and fifty copies each of the reports of the several officers required to report to the legislature through the governor, and of any other document he may deem essential to accompany the message.

2. Of the documents to be printed as aforesaid, each officer making a report shall be entitled to two hundred and fifty copies thereof, and the governor to the same number of the message, reports and documents for the use of the executive department, and a like number of the same to be bound together and disposed of as the governor may direct, and the residue shall be distributed between the houses of the legislature in proportion to the number of members composing each.

ADOPTED, February 28, 1866.

[No. 19.] Joint Resolutions providing for re-printing certain acts.

Resolved by the Legislature of West Virginia:

1. Fifteen hundred copies each of the ordinances of the convention which assembled at Wheeling, on the the 11th of June, 1861, of the acts of the general assembly of Virginia, passed at the sessions commencing July 1, 1861, December 2, 1861, May 6, 1862, and December 4, 1862, with the constitution of this state, the schedule accompanying the original constitution and the ordinances accompanying the amended constitution, and the acts of the legislature for the years 1863, 1864, 1865 and 1866, shall be printed and bound in one volume in the form now prescribed by law for the acts of each session.

2. The volumes to be printed and bound as provided in the foregoing section, shall be delivered by the public printer to the secretary of the state, who shall dispose of the same as provided in section 11 chapter 21 acts of 1865, except that he shall deliver to the clerk of the senate twenty-two copies, one for his own use and the others to be kept in his office for the use of the senate; sixty copies to the clerk ot the house of delegates, one for his own use and the others to be kept in his office for the use of the house, and shall place twelve copies in the library of the state, and five copies in the library of the supreme court of appeals, and shall offer for sale the remainder at a price to be fixed by him, not below cost, and pay the proceeds of all sales into the treasury.

Adopted, February 28, 1866.

[No. 20.] Joint Resolution providing for the distribution of certain acts.

Resolved by the Legislature of West Virginia, That the 500 copies of the acts in sheets, to which the members of this legislature are entitled, be by the public printer bound as the other acts of the session are bound, and delivered to the clerk of the house of delegates, whose duty it is made to forward the same as soon as practicable to the members of this legislature.

Adopted March 1, 1866.

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